

000237

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)

50

03/03

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

Development Services Department

3. DATE:

December 2, 2008

SUBJECT:

Torrey Brooke II - Project No. 2118

4. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Derrick Johnson, 446-5238, MS 501

5. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Michelle Sokolowski, 446-5278, MS 501

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

| FUND | | | | | 9. ADDITIONAL INFORMATION / ESTIMATED COST: |
|----------------|--------|--|--|--|---|
| DEPT. | 1317 | | | | No cost to the City. All costs are recovered through a deposit account funded by the applicant. |
| ORGANIZATION | 1671 | | | | |
| OBJECT ACCOUNT | 4038 | | | | |
| OB ORDER | 420188 | | | | |
| C.I.P. NUMBER | | | | | |
| AMOUNT | | | | | |

10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|---------------------|--------------------|-------------|---|---------------------|--------------------|-------------|
| 1 | ORIG. DEPT | KELLY BROUGHTON | 10/30/08 | 8 | DEPUTY CHIEF | WILLIAM ANDERSON | 10/30/08 |
| 2 | EAS | TERRIE MUMFORD | 10/31/08 | 9 | | | |
| 3 | EOCP | | | 10 | CITY ATTORNEY | | |
| 4 | | | | 11 | ORIG. DEPT | MIKE WESTLAKE | |
| 5 | | | | DOCKET COORD: _____ COUNCIL LIAISON: _____ | | | |
| 6 | | | | COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> | | | |
| 7 | | | | REFER TO: _____ COUNCIL DATE: _____ | | | |

11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

Council ordinance rezoning 2.13-acres in the Torrey Highlands Subarea Plan IV.

Council resolution certifying the information contained in LDR File No. 2118 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Mitigated Negative Declaration No. 2118, reflects the independent judgment of the City of San Diego as Lead Agency, stating for the record the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project, adopting the Mitigation Monitoring and Reporting Program.

Council resolution approving Public Right-of-Way Vacation No. 478535

Council resolution approving the Tentative Map No. 366169.

Council resolution approving Planned Development Permit No. 366166 and Site Development Permit No. 366168.

11A. STAFF RECOMMENDATIONS:

Adopt the Resolutions.

RECEIVED
CITY CLERK
08 OCT 30 PM 3:38
SAN DIEGO, CALIF.

000238

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): Torrey Highlands

ENVIRONMENTAL IMPACT: A Mitigated Negative Declaration No. 2118 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) guidelines. A mitigation, monitoring and reporting program has been prepared and will be implemented which will reduce, to a level of insignificance, any potential impacts identified in the environmental review process.

HOUSING IMPACT: The proposed project is subject to the 1996 Torrey Highlands Subarea plan. The Subarea plan designates the subject property as low density residential (2-5 du/ac). The Torrey Highlands Subarea plan and phase shift were approved by the voters of the city of San Diego on November 5, 1996. The vote mandated that no more than 2,600 residential units be constructed in the phase shifted portion of Torrey Highlands. Because most of the approved residential units have been developed, no more than two dwelling units can be developed on the subject site, due to the voter mandated cap.

INSTRUCTIONS TO THE CITY CLERK:

1. Public noticing is required.
2. Return copies of each resolution to Derrick Johnson, MS 501.
3. Council action requires a majority vote.
4. The SDP is being processed in accordance with SDMC §126.0501, the PDP is being processed in accordance with SDMC the VTM in accordance with government code SDMC §125.0440.

000239

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)

50

03/03

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

Development Services Department

3. DATE:

December 2, 2008

SUBJECT:

Torrey Brooke II - Project No. 2118

PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Derrick Johnson, 446-5238, MS 501

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Michelle Sokolowski, 446-5278, MS 501

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

| IND | | | | | 9. ADDITIONAL INFORMATION / ESTIMATED COST: |
|-----------------|--------|--|--|--|---|
| DEPT. | 1317 | | | | No cost to the City. All costs are recovered through a deposit account funded by the applicant. |
| ORGANIZATION | 1671 | | | | |
| SUBJECT ACCOUNT | 4038 | | | | |
| ORDER | 420188 | | | | |
| I.P. NUMBER | | | | | |
| AMOUNT | | | | | |

10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|---------------------|--------------------|-------------|-----------|---------------------|--|-------------|
| 1 | ORIG. DEPT | KELLY BROUGHTON | 10/30/08 | 8 | DEPUTY CHIEF | WILLIAM ANDERSON | 10/30/08 |
| 2 | EAS | TERRIE JUNGARDNER | 10/31/08 | 9 | | | |
| 3 | EOCP | | | 10 | CITY ATTORNEY | 7-1 | 2/10/09 |
| 4 | | | | 11 | ORIG. DEPT | MIKE WESTLAKE | |
| 5 | | | | | DOCKET COORD: | COUNCIL LIAISON: | |
| 6 | | | | | COUNCIL PRESIDENT | <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION | |
| 7 | | | | | REFER TO: | COUNCIL DATE: | |

11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

Council ordinance rezoning 2.13-acres in the Torrey Highlands Subarea Plan IV.

Council resolution certifying the information contained in LDR File No. 2118 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Mitigated Negative Declaration No. 2118, reflects the independent judgment of the City of San Diego as Lead Agency, stating for the record the final Mitigated Negative Declaration has been reviewed and considered prior to approving the project, adopting the Mitigation Monitoring and Reporting Program.

Council resolution approving Public Right-of-Way Vacation No. 478535

Council resolution approving the Tentative Map No. 366169.

Council resolution approving Planned Development Permit No. 366166 and Site Development Permit No. 366168.

11A. STAFF RECOMMENDATIONS:

Adopt the Resolutions.

000240

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): Torrey Highlands

ENVIRONMENTAL IMPACT: A Mitigated Negative Declaration No. 2118 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) guidelines. A mitigation, monitoring and reporting program has been prepared and will be implemented which will reduce, to a level of insignificance, any potential impacts identified in the environmental review process.

HOUSING IMPACT: The proposed project is subject to the 1996 Torrey Highlands Subarea plan. The Subarea plan designates the subject property as low density residential (2-5 du/ac). The Torrey Highlands Subarea plan and phase shift were approved by the voters of the city of San Diego on November 5, 1996. The vote mandated that no more than 2,600 residential units be constructed in the phase shifted portion of Torrey Highlands. Because most of the approved residential units have been developed, no more than two dwelling units can be developed on the subject site, due to the voter mandated cap.

INSTRUCTIONS TO THE CITY CLERK:

1. Public noticing is required.
2. Return copies of each resolution to Derrick Johnson, MS 501.
3. Council action requires a majority vote.
4. The SDP is being processed in accordance with SDMC §126.0501, the PDP is being processed in accordance with SDMC the VTM in accordance with government code SDMC §125.0440.

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: TO BE FILLED IN REPORT NO.: TO BE FILLED IN
 ATTENTION: Council President and City Council
 ORIGINATING DEPARTMENT: Development Services Department
 SUBJECT: Torrey Brooke II, PTS Project Number 2118
 COUNCIL DISTRICT(S): 1
 STAFF CONTACT: Derrick Johnson, 619-446-5238, dnjohnson@sandiego.gov

REQUESTED ACTION: City Council Certify Mitigated Negative Declaration No. 2118, and Adopt the Mitigation, Monitoring, and Reporting Program and approve Rezone No. 366168, Tentative Map No. 366169, Planned Development Permit No. 366166, Street Vacation No. 478535 and Site Development Permit No. 366167, to allow the subdivision of 2.13-acres of vacant land into three lots to construct two, two-story, single family residences and one Open Space lot.

STAFF RECOMMENDATIONS:

1. Certify Mitigated Negative Declaration No. 2118, and Adopt the Mitigation, Monitoring, and Reporting Program; and
2. Approve Rezone No. 366168, Tentative Map No. 366169, Planned Development Permit No. 366166, Street Vacation No. 478535 and Site Development Permit No. 366167.

EXECUTIVE SUMMARY: The vacant 2.13-acre site is located on the west side of the southerly extension of La Harina Court within the Torrey Highlands Subarea Plan IV, and is currently zoned AR-1-1 (Agricultural). The project site is bordered roughly to the south by Adobe Bluffs Road, to the west, east, and north by single-family residences (Attachment 3). The project proposes the subdivision of a 2.13-acre site into three lots to allow the construction of two single-family residences of approximately 4,812-square-feet and 4,642 square-feet respectively. The project proposes to rezone the 2.13-acre site from AR-1-1 (Agriculture) to RS-1-13 (Residential). The RS-1-13 zone would allow for the single-family development. The proposed project also requires the vacation of two public rights-of ways. The right-of ways were to be used for the construction of Black Mountain Road, the road has already been constructed and these easements are no longer required. In addition, rather than providing the required legal frontage and access to Lot Two (2) as required by the applicable development regulations, the applicant has requested a Planned Development Permit, which allows the necessary legal frontage to be served via a private driveway extending southerly from La Harina Court. Staff supports the deviation which allows greater flexibility in the design of the project.

Staff has reviewed the proposed project and determined that, with the exception of the proposed deviations, the project meets all relevant regulations and is consistent with the purpose and intent of the regulations in effect for this site. Staff supports the proposed project as evidenced by the draft resolution of approval.

000242

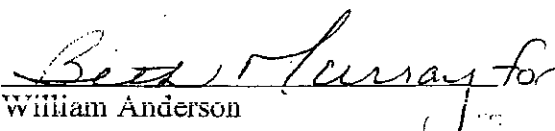
FISCAL CONSIDERATIONS: All cost associated with this project are recovered from a deposit account maintained by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On October 9, 2009, the Planning Commission voted 6-0-0 to recommend approval of the project to the City Council..

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On July 2, 2008, the applicants presented the proposed project before the Rancho Penasquitos Planning Board for another review. The Board decided not to issue another official vote and their initial vote of 11-0-1 to recommend approval was still valid as of September 2, 2008. However, on September 3, 2008 the Board unanimously rescinded their previous approval and voted unanimously to deny the project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Torrey Brooke Developments Inc.


Kelly Broughton
Director, Development Services Department


William Anderson
Deputy Chief Operating Officer
Executive Director of City Planning
and Development

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Rezone - B sheet
5. Draft Tentative Map
6. Project Site Plans
7. Draft Permit with Conditions
8. Tentative Map Resolution
9. Draft Resolution with Findings
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement
12. Project Data Sheet
13. Street Vacation Resolution
14. Project Chronology
15. Site Photos

NOTICE OF DETERMINATION
LOCAL AGENCY APPROVAL
PRIVATE PROJECT

000243

☒ Recorder/County Clerk
P.O. Box 1750, MS A-33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

☒ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

DR Number: 42-0188
State Clearinghouse Number: SCH #2008021118
Project Number: 2118
Project Title: Torrey Brooke II.
Project Location The project is located in Torrey Highlands (Subarea IV); on the west side of the southerly extension of La Marina Court, east of Camino Ruiz, west of Black Mountain Road, and south of Carmel Valley Road. (APN No. 306-030-0400, Remainder Parcel of Torrey Brooke, Tract No. 98-1189, Parcel Map No. 14383), City and County of San Diego, California.
Project Description PLANNED DEVELOPMENT PERMIT, SITE DEVELOPMENT PERMIT (ESL), REZONE, STREET VACATION, & TENTATIVE MAP), to rezone (from AR-1-1 to RS 1-13), and subdivide 2.13 acres of vacant land into three lots. The lots would consist of 1 open space lot of 1.5 acres, and 2 residential lots on the remainder. Two, 2-story, single family residences would be constructed.
Project Applicant: Roger Bhatia, Civcom and Associates, 5850 Oberlin Dr., Suite 350, San Diego, CA. 92121, Phone - (619) 58-9400.

h to advise that the City Council of the City of San Diego, on _____, approved the above described project and made the following determinations:

The project in its approved form ___ will, ☒ will not, have significant effects on the environment beyond those identified in Project No. 2118, LDR No. 42-0188, Mitigated Negative Declaration for the Torrey Brooke II project, SCH No. 2008021118
___ An Environmental Impact Report was considered by the City as a Responsible Agency for this project and certified pursuant to the provisions of CEQA by the Lead Agency, _____.

☒ A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
Mitigation measures ☒ were, ___ were not, made a condition of the approval of the project.

is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Entitlements Division, Development Services Department, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Analyst: Smit Kicklighter
Telephone: 619-446-5378
Filed by: 
Title: Terri Bumgardner
Senior Planner

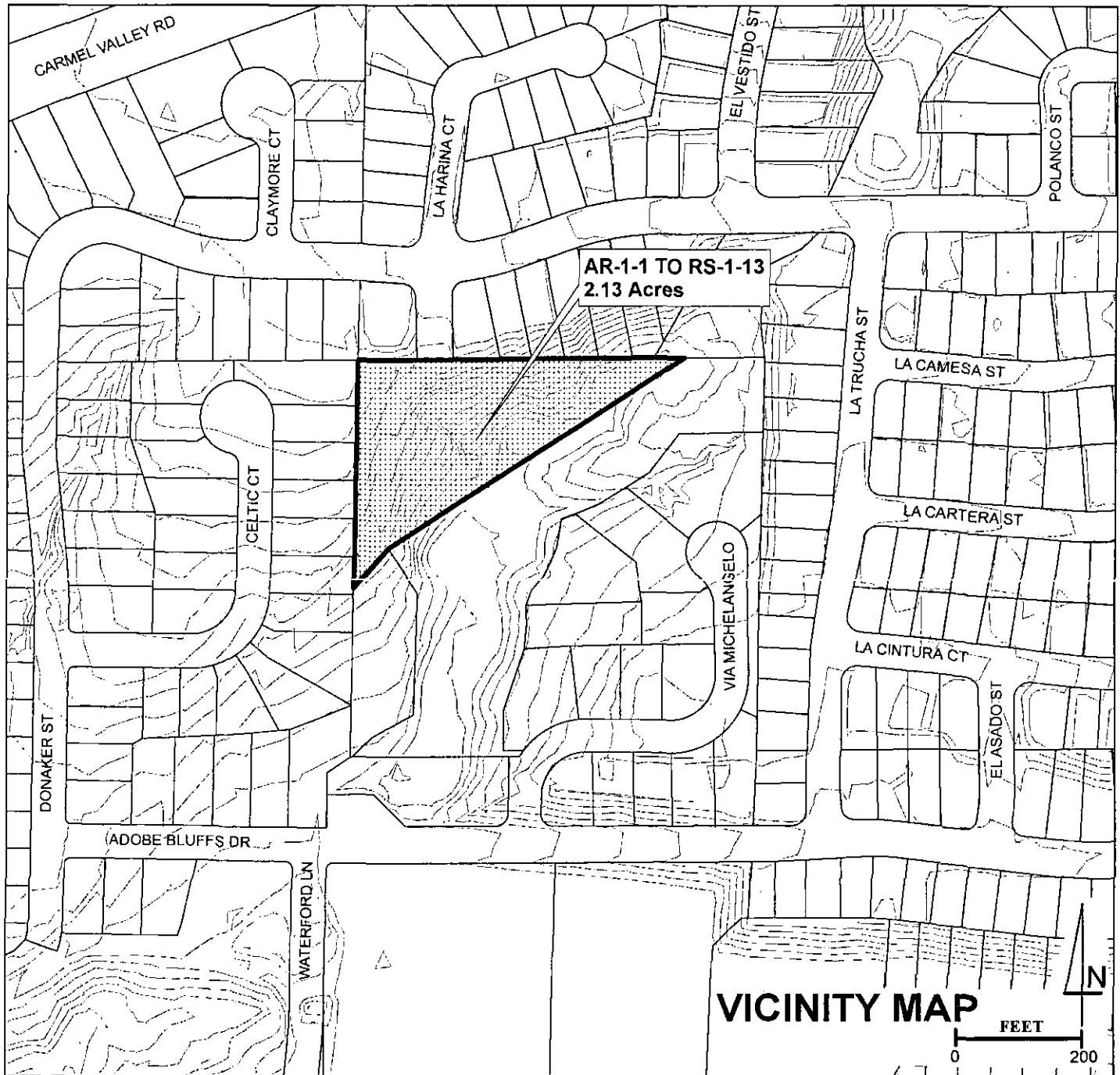
Reference: California Public Resources Code, Sections 21108 and 21152.

000245



CITY OF SAN DIEGO • DEVELOPMENT SERVICES

PROPOSED REZONING



Remainder Parcel of Torrey Brooke, Tract No. 98-1189, Map No. 14383

ORDINANCE NO. _____
 EFF. DATE ORD. _____
 ZONING SUBJ. TO _____
 BEFORE DATE _____
 EFF. DATE ZONING _____
 MAP NAME AND NO. _____

REQUEST RS-1-13
 PLANNING COMM. RECOMMENDATION APPROVAL
 CITY COUNCIL ACTION

PTS 2118
 CASE NO. TORREY BROOKE II

Neelva Johnson
 DEVELOPMENT SERVICES MANAGER

B- 4264

APN: 306-031-18

(294-1725) 05-16-08 ldj

000247

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 2.132-ACRES LOCATED AT THE END OF LA HARINA COURT AND BORDERED ROUGHLY TO THE SOUTH BY ADOBE BLUFFS ROAD, TO THE WEST, EAST, AND NORTH BY SINGLE-FAMILY HOMES IN THE AR-1-1 ZONE, WITHIN THE TORREY HIGHLAND SUBAREA PLAN IV, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE AR-1-1 ZONE INTO THE RS-1-13 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTIONS 131.0401; AND REPEALING ORDINANCE NO. 18451 NEW SERIES, ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HEREWITH.

This ordinance approves the rezoning of 2.132 acres from the AR-1-1 zone to the RS-1-1 zone, in connection with property located at the end of La Harina Court, bordered roughly to the south by Adobe Bluffs Road, and bordered to the west, east, and north by single-family homes, in the Torrey Highland Subarea Plan IV, in the City of San Diego, California.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

NF:pev
02/06/09
Or.Dept:DSD
O-2009-75
MMS #5954

000249

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 2.132-ACRES LOCATED AT THE END OF LA HARINA COURT AND BORDERED ROUGHLY TO THE SOUTH BY ADOBE BLUFFS ROAD, TO THE WEST, EAST, AND NORTH BY SINGLE-FAMILY HOMES IN THE AR-1-1 ZONE, WITHIN THE TORREY HIGHLAND SUBAREA PLAN IV, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE AR-1-1 ZONE INTO THE RS-1-13 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTIONS 131.0401; AND REPEALING ORDINANCE NO. 18451 NEW SERIES, ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INsofar AS THE SAME CONFLICTS HERewith.

WHEREAS, on October 5, 2001, Torrey Brooke Development Inc., Owner/Permittee submitted an application to the City of San Diego for a rezone, public right-of-way vacation, tentative map, planned development permit/site development permit; and

WHEREAS, under Municipal Code section 123.0103, a property owner may commence a zoning or rezoning action by filing an application; and

WHEREAS, under Municipal Code section 123.0105 the City Council may approve a zoning or rezoning action whenever public necessity or convenience, the general welfare, or good zoning practice justifies this action; and

WHEREAS, under Charter section 280(a)(2) this ordinance is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

000250

Section 1. That the 2.132-acres located at the end of La Harina Court, bordered roughly to the south by Adobe Bluffs Road, and bordered to the west, east, and north by single-family homes, and legally described as remainder Parcel of Torrey Brook, Tract No. 98-1189, Map No. 14383, recorded May 1, 2002, in the Torrey Highland Subarea Plan IV, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4264, filed in the office of the City Clerk as Document No. OO-_____, are rezoned from the AR-1-1 zone to the RS-1-13 zone described and defined by San Diego Municipal Code section 131.0401. This action amends the Official Zoning Map adopted by Resolution R-301263 on March 14, 2006.

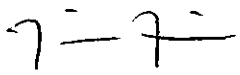
Section 2. That Ordinance No. 18451 New Series, adopted December 9, 1997 of the ordinances of the City of San Diego is repealed insofar as the same conflicts with the rezoned uses of the land.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:as:mm;pev
02/06/09
Or.Dept:DSD
O-2009-75
MMS#5954

000251

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION CERTIFYING THAT MITIGATED NEGATIVE
DECLARATION NO. 2118 FOR THE TORREY BROOKE II
PROJECT WAS COMPLETED IN COMPLIANCE WITH
CEQA.

WHEREAS, on October 5, 2001, Torrey Brooke Development Inc., Owner/Permittee submitted an application to the City of San Diego for a public right-of-way vacation, tentative map, planned development permit/site development permit and rezone for the Torrey Brooke II Project; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on _____; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration [MND] No. 2118/SCH. No. 200821118; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that MND No. 2118/SCH. No. 200821118, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the state Guidelines thereto (California

000252

Code of Regulations section 15000 et seq.), that the MND reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the MND, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of public right-of-way vacation, tentative map, planned development permit/site development permit and rezone for the Torrey Brooke II Project.

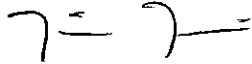
BE IT FURTHER RESOLVED, that the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study; therefore, MND No. 2118/SCH. No. 200821118, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation, Monitoring, and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:as:mm:pev
02/06/09
Or.Dept:DSD
R-2009-621
MMS#5954

EXHIBIT A

MITIGATION, MONITORING, AND REPORTING PROGRAM:

To ensure that site development would avoid significant environmental impacts, a Mitigation, Monitoring, and Reporting Program (MMRP) is required. Compliance with the mitigation measures shall be the responsibility of the applicant. The mitigation measures are described below.

General Measures

1. Prior to the issuance of a Notice to Proceed (NTP) or any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits the Assistant Deputy Director (ADD) environmental designee of the City's Land Development Review Division (LDR) shall verify that the grading and/or construction plans include an index of sheets shown on the first map sheet which includes "Environmental Requirements" and the following statement "The Torrey Brooke II development project is conditioned to have a qualified biological monitor on-site as determined at the preconstruction meeting. The project and shall conform to the Mitigation Monitoring and Reporting Program conditions as contained in the environmental document (LDR No. 42-0188, SCH No. Pending) and as shown verbatim on sheet(s)___." Please note, additional related mitigation features and/or notes can also be included on individual map sheets where appropriate (i.e. depicting areas of revegetation)."
2. Prior to issuance of any grading permits, the owner/permittee shall make arrangements to schedule a pre-construction meeting to ensure implementation of the MMRP. The meeting shall include the City Field Resident Engineer (RE), the monitoring biologist, and staff from the City's Mitigation Monitoring and Coordination (MMC) Section.

Biological Resources

Upland Mitigation

3. The proposed project area includes a total of 2.132 acres. Prior to recordation of the first final map and/or issuance of grading permits (which ever comes first), impacts to 0.362 acres of Diegan coastal sage scrub (located outside the MHPA) shall be mitigated to the satisfaction of the City Manager through off-site preservation of upland habitats in conformance with the City's Environmentally Sensitive Lands Ordinance (ESL) (Option A); or through payment into the City's Habitat Acquisition Fund No. (Option B).
- Option A: For the off-site preservation option, the owner/permittee shall record a Covenant of Easement, Conservation Easement, or dedication in fee title to the City of San Diego for a total of 0.362 acres inside the MHPA in Tiers I-III, or 0.543 acres of Tier II outside the MHPA.
- Option B: For the HAF option, the applicant shall pay an estimated total of \$13,937 into the fund (Assumes mitigation within MHPA, at current City rate of \$35,000 per acre + 10 % administration fee (both of which are subject to change), at 0.362 acres, = \$13,937.

Wetland Mitigation

4. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the Owner/Permittee shall submit a copy of the permit, authorization letter, or other official mode of communication from the resource agencies (i.e., ACOE, USFWS, CDFG, and/or RWQCB) to the ADD of LDR verifying that all necessary federal and state permits have been obtained for the 350 square-foot/approx. 0.008 acre wetlands impacts.

Preconstruction Measures

5. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below (see A through D):
 - A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of LDR stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.
 - B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project, if changed and/or not provided in the first letter.
 - C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife (including USFWS protocol) surveys, impact avoidance areas or other such information has been completed and approved by City MMC.
 - D. The qualified biologist (project biologist) shall attend the first preconstruction meeting and perform measures listed under General Birds below (i.e. perform any required pre-grading/construction bird surveys).

General Birds

6. In order to comply with the Federal Migratory Bird Treaty Act, and CA Department of Fish and Game (CDFG) Code (which essentially prohibits any take of bird species - including disturbance of eggs, fledglings, nests, or plants/ substrate the nest is located in, or causing adults to abandon nests), the project biologist shall verify that no nesting birds are present on any portion of the project site or nearby vicinity (including off-site areas to be impacted) during grading and construction operations that would be disturbed indirectly or directly by the project, especially during the typical bird breeding season between February 1 and September 15. If any breeding birds would be directly

impacted by grading, breeding season work shall be avoided, or the project biologist shall work with EAS and the appropriate wildlife agencies (i.e. US Fish and Wildlife Service and CDFG) to determine appropriate mitigation. If any least Bell's vireo or southwestern willow flycatcher are found to be nesting in the adjacent Drainage A, the following would apply:

AVIAN NOISE MITIGATION for LEAST BELL'S VIREO (State Endangered/Federally Endangered) and SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) – PLEASE NOTE, CAGN WOULD NOT BE PROTECTED ON-SITE DUE TO LACK OF MHPA ON OR ADJACENT TO THE SITE

7. Prior to the issuance of any grading permit, the City ADD (or appointed designee) shall verify that the following project requirements regarding the least Bell's vireo and southwestern willow flycatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 15 AND SEPTEMBER 15, THE BREEDING SEASON OF THE LEAST BELL'S VIREO; OR BETWEEN MAY 1 AND SEPTEMBER 1, THE BREEDING SEASON OF THE SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY ADD:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE LEAST BELL'S VIREO AND SOUTHWESTERN WILLOW FLYCATCHER. SURVEYS FOR THE THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. IF THE EITHER BIRD SPECIES IS PRESENT IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED LEAST BELL'S VIREO HABITAT SHALL BE PERMITTED. BETWEEN MAY 1 AND SEPTEMBER 1, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND

AND DEPENDING ON THE SPECIES BETWEEN MARCH 15 AND

SEPTEMBER 15 AND/OR BETWEEN MAY 1 AND SEPTEMBER 1, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED LEAST BELL'S VIREO OR SOUTHWESTER WILLOW FLYCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF ANY OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

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AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE LEAST BELL'S VIREO. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 2 AND/OR SEPTEMBER 16).

- * Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

B. IF LEAST BELL'S VIREO OR SOUTHWESTERN WILLOW FLYCATCHER ARE NOT DETECTED DURING THE PROTOCOL SURVEYS, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 15 AND SEPTEMBER 15 AND OR MAY 1 AND SEPTEMBER 1 AS FOLLOWS:

I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS

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HIGH FOR LEAST BELL'S VIREO AND/OR SOUTHWESTERN WILLOW FLYCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.

- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THESE SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

Construction Measures

8. As determined at the Preconstruction Meeting, the project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within onsite, and surrounding sensitive habitat as shown on the approved Exhibit A.
9. All construction activities (including staging areas) shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

Post Construction Measures

10. The following measures are required in order to carry out and ensure the successful revegetation of the graded portions of the Biology Buffer and Zone 2 Brush Management Areas (although these direct impacts will be mitigated of site per ESL ratios – the following 25 month revegetation program is required:
 - A. Final Grading Report and 25 Month Revegetation Program
 1. 25 month Revegetation Establishment/Maintenance Period
 - a. The RMC shall be retained to complete initial grading and maintenance monitoring activities throughout the 25 month monitoring period.
 - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
 - c. Maintenance activities will include all items described in the LCD.
 - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC.
 2. Biological Monitoring
 - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.

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- b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
- c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly through the second year.
- d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, and 24 months by the PQB or QBM. All plant material must be able to survive without supplemental irrigation after the first two years.
- e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height (if applicable) and percent cover of non-native/non invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used to determine attainment of performance/success criteria identified within the LCD.
- f. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PQB/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

C. Submittal of Final Grading Report and Draft Monitoring Report

- 1. A Final Grading Report documenting any additional impact areas or problems during grading; and a draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The latter report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120 day period to determine mortality of individuals.

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2. The PQB shall submit two copies of the Final Grading Report and Draft Monitoring Report which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.
3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

D. Final Monitoring Reports(s)

11. PQB shall prepare a Final Monitoring upon achievement of the 25-month performance/success criteria and completion.
 - a. The Final Monitoring report shall be submitted to MMC for evaluation of the success of the mitigation effort and final acceptance. A request for a pre-final inspection shall be submitted at this time, MMC will schedule after review of report.
 - b. If at the end of the 25 months any of the revegetated area fails to meet the project's final success standards, the applicant must consult with MMC. This consultation shall take place to determine whether the revegetation effort is acceptable. The applicant understands that failure of any significant portion of the revegetation/restoration area may result in a requirement to replace or renegotiate that portion of the site and/or extend the monitoring and establishment/maintenance period until all success standards are met.

Land Use (MHPA Adjacency) – PLEASE NOTE THESE REQUIREMENTS APPLY TO PROTECT THE DESIGNATED URBAN AMENITY ABUTTING THE SITE TO THE EAST AND DUE TO THE CONNECTIVITY OF “DRAINAGE A” WITH MHPA TO THE SOUTH

Mitigation for Indirect Impacts or Unanticipated Direct Impacts

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12. Prior to issuance of grading permits, the City shall verify that the project is in compliance with the MSCP Subarea Plan's Land Use Adjacency Requirements; and that the following site specific requirements are noted on the grading plans under the heading Environmental Requirements:
 - A. The qualified biologist (project biologist) shall supervise the placement of orange construction fencing or equivalent along the boundary of the development area as shown on the approved grading plans. The large patch of CA adolphia shown on Figure 4 of the biology report with a light green square with black dot in the middle is to be specifically fenced to exclude it's entirety from the grading area.
 - B. The project biologist shall meet with the owner/permittee or designee and the construction crew to conduct an on-site educational session regarding the need to avoid impacts outside of the approved development area.
 - C. During grading activities, the Best Management Practices for erosion control shall be implemented and monitored as needed to prevent any significant sediment transport. These practices may include but may not be limited to the following: the use of materials such as gravel bags, fiber rolls, sediment fencing, and erosion control matting to stabilize disturbed areas; and installation of erosion control materials, particularly on the downslope side of disturbed areas to prevent soil loss.
 - D. All construction activities shall take place only inside the fenced area. Grading materials shall be stored inside the fenced development area.
 - E. Prior to the release of the grading bond, the project biologist shall submit a letter report to the Environmental Review Manager that assesses any project impacts resulting from construction. In the event that impacts exceed the allowed amounts, the additional impacts shall be mitigated in accordance with the City of San Diego Land Developmental Zoning Code Update Biology Guidelines, to the satisfaction of the City Manager.
 - F. All drainage from development and sheet flow would flow into a new bioswale. Graded slopes would be revegetated per the City's Landscape Manual.
 - G. All lighting associated with the project will be shielded and directed away from the urban/natural edge.
 - H. All plantings at the urban/natural edge shall be native, drought tolerant, and acceptable to the fire marshal. No invasive/non-native species shall be located on-site where they have the potential to invade on-site, or adjacent natural lands. All revegetation within Brush Management Zone 2 and/or the biological buffer must be native chaparral or coastal sage scrub species.
 - I. Appropriate fencing as required by MSCP/Landscaping/Permit or Long Range Planning shall be installed at the rear of the properties to protect open space areas from urban encroachment (people, pets, plants and toxins). Typically these fences are 2 feet concrete base with open iron bars above to a maximum of 6 feet.

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION APPROVING PUBLIC RIGHT-OF-WAY
VACATION NO. 478535 OF A PORTION OF BLACK
MOUNTAIN ROAD AND ORANGE GROVE AVENUE FOR
THE TORREY BROOKE II PROJECT.

WHEREAS, California Streets and Highways Code section 8330 et seq. and San Diego Municipal Code section 125.0901 et seq. provides a procedure for the summary vacation of public right-of-way by City Council resolution where the easements are no longer required; and

WHEREAS, under San Diego Municipal Code section 125.0910(b), a public right-of-way may be summarily vacated if it does not contain public utility facilities, does not contain active public utility facilities, or contains public utility facilities that would not be affected by the vacation and if the public right-of-way, or portion of the public right-of-way, is excess public right-of-way and is not required for street or highway purposes; and

WHEREAS, under San Diego Municipal Code section 125.0940, a summary vacation of a public right-of-way pursuant to Section 125.0910(b) does not require a Resolution of Intention as specified in Section 125.0940(b); and

WHEREAS, the affected property owner has requested the summary vacation of the public right-of-way, to unencumber this property; and

WHEREAS, the Project site has never been improved, no utilities will be affected by the public right-of-way vacation, the public right-of-way to be vacated is excess public right-of-way and is not required for street or highway purposes, and the public right-of-way has been

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impassable for vehicular travel for a period of five years and public funds have not been expended for maintenance of the public right-of-way during that period; and

WHEREAS, there are no other public facilities located within the easement to be abandoned, and there is no present or prospective public use of the existing easement in its present location; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego finds that:

- (a) **There is no present or prospective use for the public right-of-way, either for the purpose for which it was originally acquired, or for any other public use of a like nature that can be anticipated.** The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The easements were intended to be used for the construction of Black Mountain Road, which has been used by the public for many years. The proposed Project is considered an infill project and the majority of the public infrastructure in the neighborhood has already been constructed. Staff has determined that the easements are no longer needed, and, with the exception of the private roadway and public improvements for this Project, no future roads or additional infrastructure is anticipated to be constructed within the boundaries of the Project.
- (b) **The public will benefit from the vacation through improved utilization of land.** The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. Staff has determined the Project has been designed to avoid impacts to environmentally sensitive lands and will provide an open space lot. The open space lot will be protected from any

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future development, will allow for outdoor recreation and educational, scenic, and visual enjoyment, and will facilitate the preservation of environmentally sensitive lands, thus providing a continued open space opportunities for the benefit of the community. In addition, the Project would provide for market rate housing for the public.

- (c) **The vacation does not adversely affect and is consistent with the General Plan and approved Community Plan.** The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. This property is designated in the Torrey Highland Subarea Plan IV for residential development from three to five dwelling units per net acre and open space. The proposed use of this site for residential uses would be consistent with the Torrey Highland Subarea Plan IV. Black Mountain Road has been in use by the public for several years and the easement is no longer required. Staff has determined the vacation would be consistent with the Torrey Highland Subarea Plan IV.
- (d) **The public facility system for which the right-of-way was originally acquired will not be detrimentally affected by this vacation.** The easements were intended to be used for the construction of Black Mountain Road, which has been used by the public for many years and is no longer required. The proposed Project is considered an infill Project and the majority of the public infrastructure in the neighborhood has already been constructed.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that:

1. That portion of Black Mountain Road dedicated per O.S. 57 and that portion of Orange Grove Avenue dedicated in Olive Grove Tract, according to the Map filed July 18, 1904, in Book 24 page 297, as more particularly described in Exhibit "A," and shown on Drawing No. B-4264, marked as Exhibit "B," and on file in the Office of the City Clerk as Document Nos. RR-_____, and RR-_____, is unnecessary for present or prospective public street purposes.

2. That portion of Black Mountain Road dedicated per O.S. 57, and that portion of Orange Grove Avenue dedicated in Olive Grove Tract, according to Map filed July 18, 1904, in Book 24 page 297, as more particularly as shown on Drawing No. B-4264, on file in the office of


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the City Clerk as Document No. RR- _____, which said Drawing is attached hereto
and made a part hereof, is ordered vacated.

3. That the City Clerk shall cause a certified copy of this resolution, with attached
exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

APPROVED: JAN I. GOLDSMITH, City Attorney

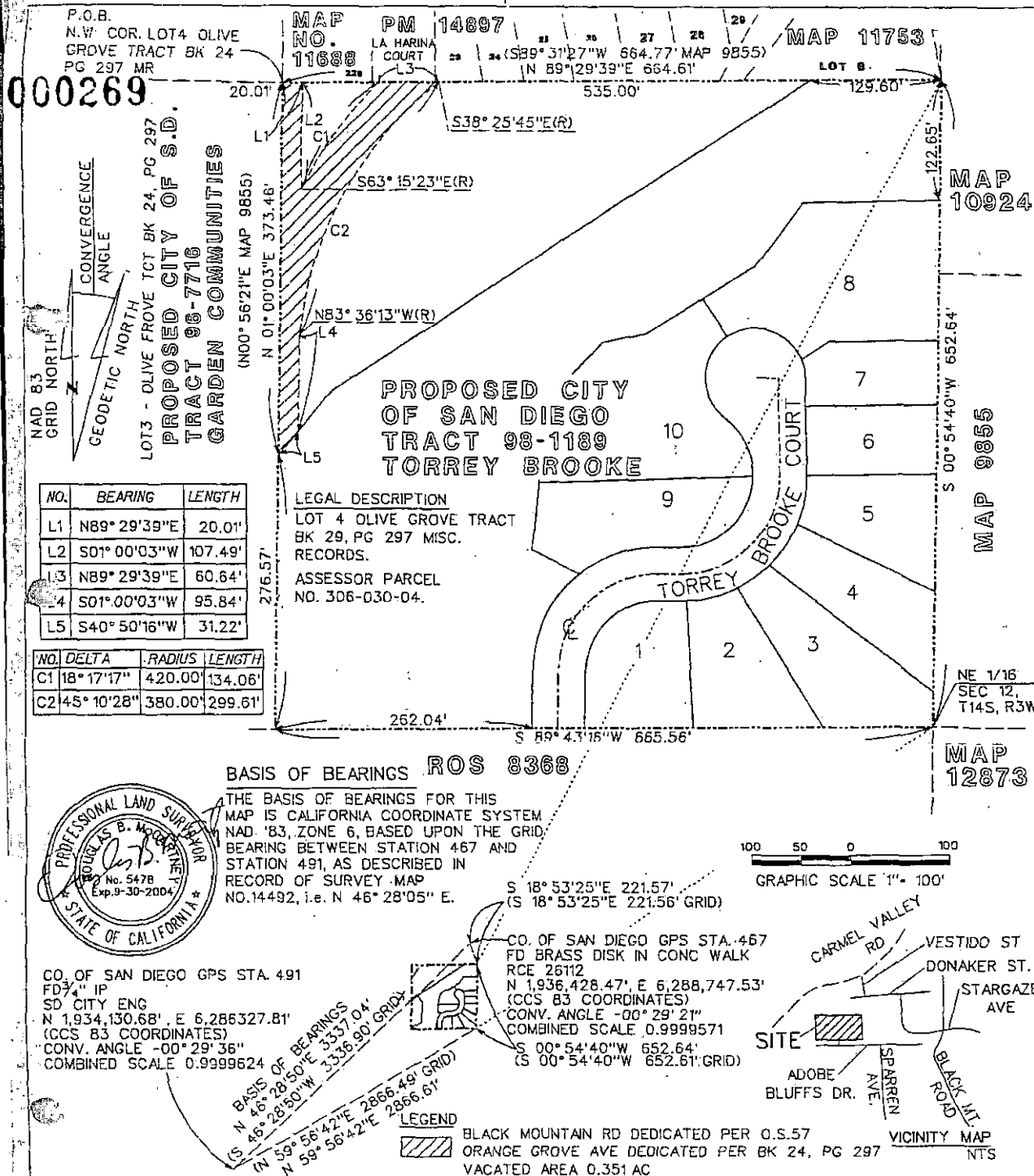
By



Nina M. Fain
Deputy City Attorney

NMF:as:mm:pev
02/06/09
Or.Dept:DSD
R-2009-622
MMS#5954

EXHIBIT A



CIVCOM & ASSOCIATES

9449-Balboa Avenue, Suite 301
San Diego, California
(858) 505-8800 Fax: (858) 505-8866


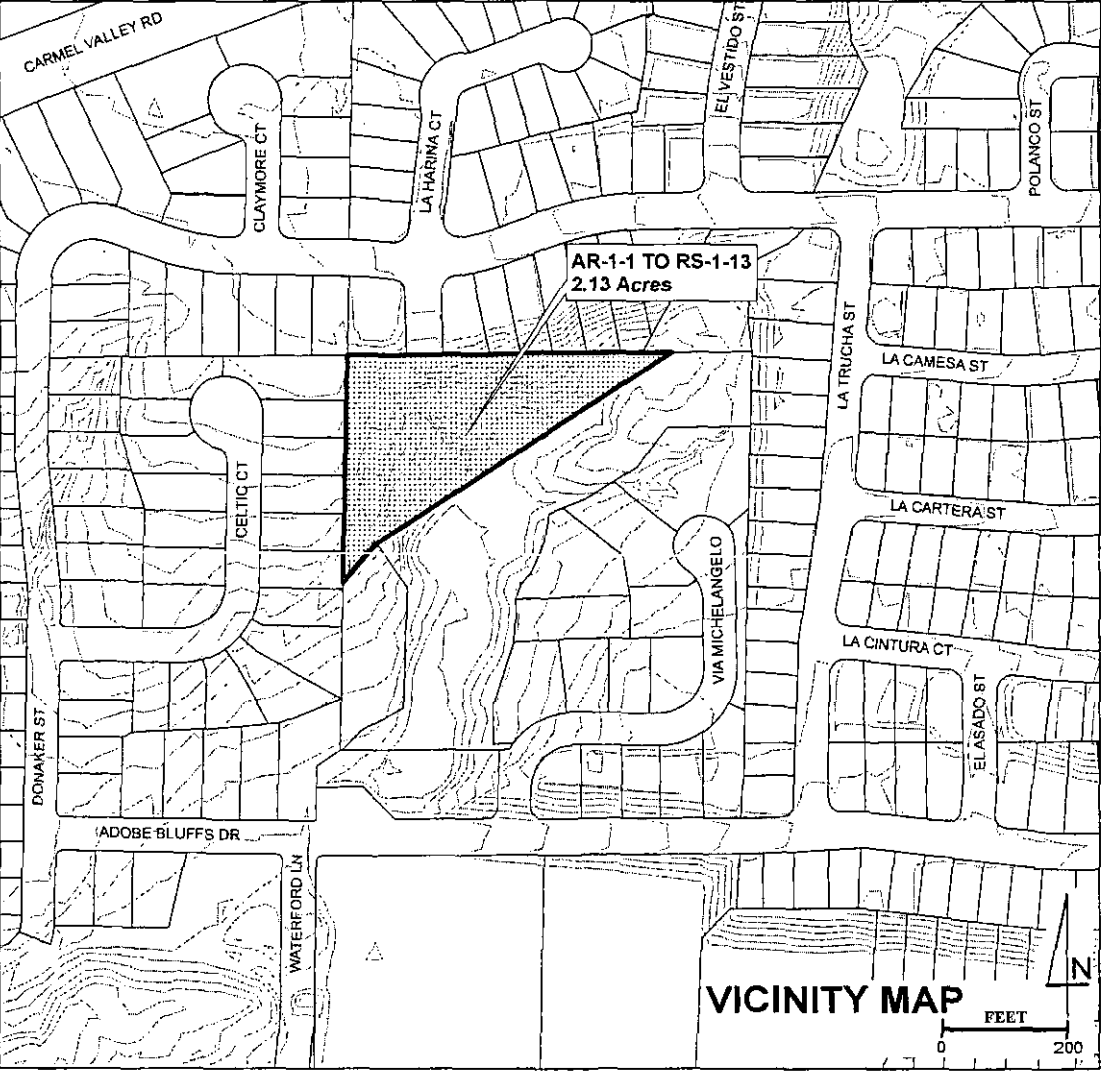
STREET VACATION OS57 AND ORANGE GROVE AVENUE

IN LOT 4, OLIVE GROVE TRACT, BOOK 24, PAGE 297,
MISCELLANEOUS RECORDS

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. 98-1189 |
|-------------|--------|----------|------|--------|-------------------------------|---------------------|
| ORIGINAL | CIVCOM | | | | SHEET 1 OF 1 SHEET | W.O. NO. 400135 |
| | | | | | | SA 00-541 |
| | | | | | | 1934-6285 |
| | | | | | | CCS 83 COORDINATES |
| | | | | | | 294-1725 |
| | | | | | | LAMBERT COORDINATES |
| | | | | | | 19350 -B |

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EXHIBIT B

|  CITY OF SAN DIEGO • DEVELOPMENT SERVICES PROPOSED REZONING | | |
|--|-------------------------------|------------------------------|
|  | | |
| Remainder Parcel of Torrey Brooke, Tract No. 98-1189, Map No. 14383 | | |
| ORDINANCE NO. _____ | REQUEST RS-1-13 | CASE NO. PTS 2118 |
| EFF. DATE ORD. _____ | PLANNING COMM. RECOMMENDATION | DEVELOPMENT SERVICES MANAGER |
| ZONING SUBJ. TO _____ | CITY COUNCIL ACTION | B- 4264 |
| BEFORE DATE _____ | | APN: 306-031-18 |
| EFF. DATE ZONING _____ | | (294-1725) 05-16-08 [dj] |
| MAP NAME AND NO. _____ | | |

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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION GRANTING TENTATIVE MAP NO. 366169
FOR THE TORREY BROOKE II PROJECT.

WHEREAS, Torrey Brooke Development Inc., Applicant/Subdivider, and Civcom and Associates, Engineers, submitted an application to the City of San Diego for Tentative Map No. 366169 for the Torrey Brooke II Project [Project], to subdivide a 2.132-acre site into three parcels for development of two single-family homes and to vacate portions of two streets: (1) that portion of Black Mountain Road dedicated per O.S. 57, and (2) that portion of Orange Grove Avenue dedicated in Olive Grove Tract, according to the Map filed July 18, 1904, in Book 24 page 297. The Project site is located on the west side of the southerly extension of La Harina Court, is bordered roughly to the south by Adobe Bluffs Road, and is bordered to the west, east, and north by single-family residences in the AR-1-1 zone (proposed RS-1-13), within the Torrey Highland Subarea Plan IV, and legally described as Remainder Parcel of Torrey Brook, Track No. 98-1189, Map No. 14383, recorded May 1, 2002; and

WHEREAS, the map proposes the subdivision of a 2.132-acre site into three lots for a residential development (two residential lots and one open space lot); and

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 366169, and pursuant to Resolution No. 4464-PC voted to recommend approval of the map; and

WHEREAS, the property contains right-of-ways which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430;

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WHEREAS, the Project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the state Subdivision Map Act and San Diego Municipal Code section 144.0220; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 366169:

1. **The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan. Land Development Code [LDC] section 125.0440(a) and Subdivision Map Act sections 66473.5, 66474(a), and 66474(b).** The subject property is located within the Torrey Highlands Subarea Plan IV and is designated for low density residential development of two to five dwelling units per acre. The Project proposes to subdivide 2.132-acres of vacant land into two lots and construct two, two-story, single-family residential dwelling units.

The Torrey Highlands Subarea Plan and Phase Shift were approved by the voters of the City of San Diego on November 5, 1996. That vote allowed for property owners to request development at densities higher than one dwelling unit per four acres of clustered residential development pursuant to the land uses of the Torrey Highlands Subarea Plan. The vote also mandated that no more than 2,600 residential units be constructed in the phase shifted portion of Torrey Highlands. The proposed project site was originally part of one parcel (Parcel "H") under application as the Torrey Brooke project (98-1189). The Torrey Highlands Subarea Plan identified approximately 43 units for that entire parcel subject to site specific analysis at the time of the project application. The Torrey Brooke project did not develop the 43 dwelling units and instead developed 10 residential units, open space, and a remainder lot. The units not utilized by

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the Torrey Brooke project were included in the total pool of available units for other projects proposed in the Subarea.

At this point the number of approved residential units is nearing the voter mandated cap of 2,600. There are only a few sites that have not yet been approved for residential development in Torrey Highlands. More than two dwelling units at this location would exceed the voter mandated cap. The proposed use of this site for residential uses would be consistent with the Torrey Highlands Subarea Plan IV. The proposed project, being determined consistent with the community plan land use, would not adversely affect the relevant land use plan.

2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code. LDC section 125.0440(b). The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The proposed development requires a Site Development Permit to assure compliance with the Environmentally Sensitive Lands regulations of the Land Development Code. The Torrey Highland Subarea Plan IV designates the subject property for very low density residential development at three to five dwelling units per acre. The density of the proposed project is 0.94, which is within the allowable density range.

The Project proposes to rezone the 2.132-acre site from the AR-1-1 (Agricultural) Zone to the RS-1-13 (Residential) Zone. The RS-1-13 Zone would allow for the single-family development. The proposed Project design is consistent with the regulations of this zone, as allowed through a Planned Development Permit. At the time of the Torrey Highlands Subarea Plan preparation and approval, the property within the Subarea Plan was zoned A-1-10, an agricultural zone permitting one dwelling unit per ten acres. According to the Subarea Plan, uses at densities higher than A-1-10 require a rezone, and property owners are required to submit a discretionary application for rezoning consistent with the Plan's land use designations. Approval of rezoning applications may be granted only if such application is consistent with the policies and requirements of the Torrey Highlands Subarea Plan and applicable environmental documents. Staff has determined that the proposed rezoning of the property would be consistent with the all applicable Land Development Code regulations.

3. The site is physically suitable for the type and density of development. LDC section 125.0440(c) and Subdivision Map Act sections 66474(c) and 66474(d). The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The Project has been designed to reduce impacts to sensitive steep slopes and biological resources and to create a grading concept compatible with the existing neighborhood. The applicants are requesting a deviation to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court through an access easement. The private driveway and easement will be located on Lot One (1) at the southern terminus of La Harina Court. Access to Lot One (1) would be via a cul de-sac at La Harina Court. Staff supports the deviation to allow greater flexibility in the design of the project. Staff has determined the deviation results in a superior design and reduction of impacts to environmentally sensitive lands. The project would not adversely affect the Land Use Element and the proposed density is consistent with the goals and policies of the Torrey Highland Subarea Plan IV. The proposed subdivision is physically suitable for the type and density of development proposed because it is compatible

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with the surrounding land uses and will serve as an extension of the adjacent existing residential development.

4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. LDC Section 125.0440(d) and Subdivision Map Act section 66474(e). The environmental review process for the proposed project included an evaluation of: Paleontological Resources, Biological Resources, and Hydrology/Water Quality. Mitigated Negative Declaration [MND] No. 2118/SCH. No. 200821118 was prepared in accordance with CEQA and it was determined that the project will not have any significant environmental impacts and the Mitigation, Monitoring, and Reporting Program [MMRP] includes the appropriate mitigation to reduce potential impacts to a level below significance.

A qualified Paleontologist or Paleontological Monitor must be present during all excavations exceeding ten feet in depth or grading previously undisturbed formations.

A qualified biologist is required to assure protection of the Least Bell's Vireo and Southwestern Willow Flycatcher habitat and to guarantee construction activities do not encroach beyond the limits of disturbance as shown on the approved Exhibit "A."

A Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan is required to ensure runoff from the development will not contribute to erosion. The proposed permanent Best Management Practices would be grass lined swales, landscaping, desiltation catch basins, and rip-rap energy dissipaters. Therefore, implementation of the MMRP would reduce, to a level below significance, any potential impacts identified in the environmental review process and the design of the subdivision or proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat.

5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare. LDC Section 125.0440(e) and Subdivision Map Act section 66474(f). The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The permit controlling the development proposed for this site contains conditions requiring Project compliance with City, state, and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Building, Fire, Plumbing, Electrical, and Mechanical Code requirements and the City regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. LDC section 125.0440(f) and Subdivision Map Act section 66474(g). The Project proposes to create three parcels from a 2.132-acre site and allow

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the development of two single-family structures. The proposed Project also requires the vacation of two public right-of ways: (1) that portion of Black Mountain Road dedicated per O.S. 57, and (2) that portion of Orange Grove Avenue dedicated in Olive Grove Tract, according to the Map filed July 18, 1904 in Book 24 page 297. The decision maker has reviewed the current vacations and determined the following findings can be made: (a) there is no present or prospective public use for the right-of way, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated; (b) the public will benefit from the action through improved utilization of the land made available by the abandonment; (c) the abandonment is consistent with the Torrey Highlands Subarea Plan IV; and (d) the public facility or purpose for which the right-of way was originally acquired will not be detrimentally affected by the abandonment or the purpose for which the right-of way was acquired no longer exists. Black Mountain Road has already been constructed and these easements are no longer required.

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities. LDC section 125.0440(g) and Subdivision Map Act section 66473.1. The design of the proposed subdivision through building orientation, architectural treatments (such as overhangs), as well as the placement and selection of plant materials provide, to the extent feasible, for future passive or natural heating and cooling opportunities.

8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources. LDC section 125.0440(h) and Subdivision Map Act section 66412.3. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and has found it to be consistent with the Torrey Highlands Subarea Plan and Phase Shift were approved by the voters of the City of San Diego on November 5, 1996. That vote allowed for property owners to request development at densities higher than one dwelling unit per four acres of clustered residential development pursuant to the land uses of the Torrey Highlands Subarea Plan. More than two dwelling units at this location would exceed the voter mandated cap. The fiscal effects of the proposed subdivision on the need for public services have been considered and have determined through conditions of approval the subdivision will pay development impact fees for its fair share for parks, library facilities, police and fire services. The decision maker has also considered the subdivision's effect on environmental resources. The environmental review process for the proposed Project included an evaluation of: Paleontological Resources, Biological Resources, and Hydrology/Water Quality. MND No. 2118/SCH. No. 200821118 was prepared in accordance with CEQA and it was determined that the project will not have any environmental impacts and the MMRP includes the appropriate mitigation to reduce potential impacts to a level below significance.

9. Implementation of the MMRP would reduce, to a level below significance, any potential impacts identified in the environmental review process; therefore, the subdivision will not adversely affect environmental resources. That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

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10. The property contains a public right-of-way which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Tentative Map No. 366169 is granted to Torrey Brooke Developments Inc., Applicant/Subdivider, and Civcom and Associates, Engineers, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:as:mm:pev
02/06/09
Or.Dept:DSD
R-2009-623
MMS#5954

TORREY BROOKE II- PROJECT NO. 2118

ADOPTED BY RESOLUTION NO. R-_____ ON _____

GENERAL

1. The tentative map shall expire three years after the effective date of the rezone of the site from AR-1-1 to the RS-1-13 zone. If the rezone is denied, this tentative map shall be deemed denied.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Parcel Map, unless otherwise noted.
3. A Parcel Map shall be recorded in the Office of the County Recorder, prior to the Tentative Map expiration date.
4. The Parcel Map shall conform to the provisions of Planned Development Permit No. 366166 and Site Development Permit No. 366167.
5. The Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project and any environmental document or decision, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.

ENGINEERING

6. The Subdivider shall extend the brow ditch discharge point to a well defined channel.
7. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP] maintenance.

8. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction BMPs necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
9. Prior to the issuance of any construction permit the Subdivider shall submit a Water Pollution Control Plan [WPCP]. The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.
10. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction BMPs on the final construction drawings, in accordance with the approved Water Quality Technical Report.
11. The Subdivider shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
12. The drainage system proposed for this subdivision, as shown on the approved tentative map, is private and subject to approval by the City Engineer.
13. The Subdivider shall, prior to issuance of any construction permit, enter into an agreement to indemnify, protect, and hold harmless City its officials and employees from any and all claims, demands, causes of action, liability, or loss because of, or arising out of runoff from La Harina Court.

MAPPING

14. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 [NAD 83].
15. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
16. The Parcel Map shall:
 - a. Use the California Coordinate System for its Basis of Bearing and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

- b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.
17. The design of the subdivision shall include private easements, if any, serving parcels of land outside the subdivision boundary or such easements must be removed from the title of the subdivided lands prior to filing any parcel or final map encumbered by these easements.

SEWER AND WATER

18. The Subdivider shall prior to issuance of any building permit pay their fare share for the construction of the Carmel Valley Trunk Sewer.
19. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map will require modification based on the accepted sewer study.
20. All proposed sewer facilities constructed for this Project shall be private.
21. The Subdivider shall design and construct all private sewer facilities serving more than one lot to the most current edition of the City of San Diego's Sewer Design Guide.
22. The Subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or record CC&R's requiring the operation and maintenance of on-site private sewer mains that serve more than one lot.
23. No private sewer facilities or laterals shall be installed in or over any public right-of-way prior to the Subdivider entering into an Encroachment Maintenance and Removal Agreement with the City.
24. Prior to the issuance of any building permits, the Subdivider shall process and record a NOTICE & AGREEMENT for each ownership being served by a private pump station or sewer facilities serving more than one ownership. The NOTICE & AGREEMENT shall require the applicant and successors in interest to indemnify and hold harmless the City and to operate and maintain all private sewer systems.
25. The Subdivider shall obtain a building permit for any private pump station serving more than one lot.

26. The Subdivider shall construct a private sewer pressure lateral along La Harina Court and connect it to the existing eight-inch public sewer main to the north in Donaker Street.
27. The Subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
28. The Subdivider shall design and construct new water services, within La Harina Court, to serve each Lot in a manner satisfactory to the Water Department Director and the City Engineer.
29. The Subdivider shall provide a letter and documentation, to the Development Project Manager, establishing the recordation of CC&Rs for the operation and maintenance of all private water facilities which serve or traverse more than a single lot or unit.
30. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer.
31. The Subdivider shall design and construct all proposed public water facilities in accordance with criteria in the current edition of the City of San Diego Water Facility Design Guidelines and all City regulations, standards, and practices pertaining thereto. Public water facilities, as shown on the approved tentative map, shall be modified at final engineering to comply with standards.

TRANSPORTATION

32. The Subdivider shall provide a standard 20-foot wide driveway with 3-foot flairs on each side aligned with the center line of La Harina Court, satisfactory to the City Engineer.
33. The Subdivider shall provide a turn around ability at the end of the proposed Private Drive "A," satisfactory to the City Engineer.
34. The Subdivider shall record a "Mutual Access Agreement" against both parcels (lot one and lot two) to allow ingress and egress to each newly created parcel, to the satisfaction of the City Engineer.

LANDSCAPING

35. Prior to the recordation of the parcel map, the Subdivider shall submit complete landscape construction documents consistent with Exhibit 'A,' including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required slope revegetation and hydroseeding of all disturbed land in accordance with the Landscape Standards and to the satisfaction of the City Manager. The Subdivider shall assure by permit and bond the installation of landscaping per landscape construction documents.

36. Prior to issuance of any engineering permits for grading, the Subdivider shall enter into a Landscape Establishment and Maintenance Agreement [LEMA] to assure long-term establishment and maintenance of all common area slope revegetation. The LEMA shall be approved by the Landscape Section of Development Services and the City Manager. The performance bond required under condition number 35 shall not be released until the LEMA is executed and assured by a new bond.
37. Prior to recordation of the Parcel Map, the Subdivider shall identify on a separate sheet titled "Non-title Sheet" the brush management areas in substantial conformance with Exhibit "A." These brush management areas shall be identified with a hatch symbol with no specific dimensions or zones called out. The following note shall be provided on the "Non-title sheet" to identify the hatched areas: "Indicates fire hazard zone(s) per Section 142.0412 of the Land Development Code."

INFORMATION

- The approval of this Tentative Map by the Council of the City of San Diego does not authorize the Subdivider to violate any federal, state, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.).
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by Education Code Section 17620, in accordance with procedures established by the Director of Building Inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within ninety days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.

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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION GRANTING PLANNED DEVELOPMENT
PERMIT NO. 366166/SITE DEVELOPMENT PERMIT
NO. 366168 FOR THE TORREY BROOKE II PROJECT.

WHEREAS, Torrey Brooke Developments Inc., Owner/Permittee, filed an application with the City of San Diego for a planned development permit/site development permit to subdivide a 2.132-acre site into three separate parcels at the end of La Harina Court, known as the Torrey Brooke II Project [Project], located on the west side of the southerly extension of La Harina Court, bordered roughly to the south by Adobe Bluffs Road, and legally described as remainder Parcel of Torrey Brook, Tract No. 98-1189, Map No. 14383, recorded May 1, 2002; in the AR-1-1 zone (proposed RS-1-13 zone), within the Torrey Highland Subarea Plan IV; and

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit No. 366166/Site Development Permit No. 366167, and pursuant to Resolution No. 4464-PC voted to recommend City Council approval of the Permit; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on _____, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

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BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following

findings with respect to Planned Development Permit No. 366166/Site Development Permit

No. 366167:

A. PLANNED DEVELOPMENT PERMIT FINDINGS

1. The proposed development will not adversely affect the applicable land use Plan. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two-single-family structures. This property is designated in the Torrey Highland Subarea Plan IV for residential development from three to five dwelling units per net acre and open space. The proposed use of this site for residential uses would be consistent with the Torrey Highland Subarea Plan IV. The proposed Project, being determined consistent with the community plan land use, would not adversely affect the relevant land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare The Project proposes to create three parcels from a 2.132-acre site and allow the development of two-single-family structures. The permit controlling the development proposed for this site contains conditions addressing the Project compliance with the City's regulations and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Building, Fire, Plumbing, Electrical, and Mechanical Codes and the City regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

3. The proposed development will comply with the regulations of the Land Development Code. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. Specific conditions of approval require the continued compliance with all relevant regulations of the San Diego Land Development Code in effect for this site and have been written as such into the permit. Development of the site with a residential use shall meet all requirements of the regulations, as allowed through a Planned Development Permit. Concept plans for the Project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the Project.

4. The proposed development, when considered as a whole, will be beneficial to the community. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The provision of market rate housing provides a benefit to the community by adding to the available housing stock of the City, is consistent with other approved land uses in the community, is consistent with the intended planning efforts of the City, and will enhance the neighborhood and community by its being developed as described by the submitted conceptual designs.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable Project than would be achieved if

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designed in strict conformance with the development regulations of the applicable zone.

The Project proposes to create three parcels from a 2.132-acre site and allow the development of two-single-family structures. The Project has been designed to reduce impacts to sensitive steep slopes, biological resources, and to create a grading concept compatible with the existing neighborhood. The applicants are requesting a deviation to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court through an access easement. The private driveway and easement will be located on Lot One (1) at the southern terminus of La Harina Court. Access to Lot One (1) would be via a cul de-sac at La Harina Court. Staff supports the deviation to allow greater flexibility in the design of the Project. Staff has determined the deviation results in a superior design and reduction of impacts to environmentally sensitive lands. The Project would not adversely affect the Land Use Element and is consistent with the goals and policies of the Torrey Highland Subarea Plan IV.

B. SITE DEVELOPMENT PERMIT FINDINGS

1. The proposed development will not adversely affect the applicable land use plan. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The Torrey Highland Subarea Plan IV identifies this site for residential development. This property is designated in the Torrey Highland Subarea Plan IV for residential development up to three to five dwelling units per net acre and open space. Please see Planned Development Permit Finding No. 1 above.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The permit controlling the proposed development and its continued operation contains conditions addressing Project compliance with applicable City, regional, state, and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the Project area. Please see Planned Development Permit Finding No. 2 above.

3. The proposed development will comply with the regulations of the Land Development Code. The Project proposes to create three parcels from a 2.132-acre site and allow the development of two single-family structures. The proposed development requires a Site Development Permit to assure compliance with the Environmentally Sensitive Lands Ordinance of the Land Development Code. The Torrey Highland Subarea Plan IV designates the subject property for Very Low Density Residential development at three to five dwelling units per acre. The density of the proposed Project is 0.94, which is within the allowable density range. The proposed development with the exception of the street frontage requirement complies with all applicable Land Development Code regulations as allowed by a Planned Development Permit.

C. SITE DEVELOPMENT PERMIT SUPPLEMENTAL FINDINGS— ENVIRONMENTALLY SENSITIVE LANDS

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The project has been designed to reduce impacts to sensitive steep slopes, biological resources and to create a grading concept compatible with the

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existing neighborhood. The applicants are requesting a deviation to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court through an access easement. The private driveway and easement will be located on Lot One (1) at the southern terminus of La Harina Court. Access to Lot One (1) would be via a cul de-sac at La Harina Court. Staff supports the deviation to allow greater flexibility in the design of the project. Staff has determined the deviation results in a superior design and reduction of impacts to environmentally sensitive lands. Staff has determined the deviation would result in a superior design and reduces impacts to environmentally sensitive lands. Therefore the project site is physically suitable for the project and would result in a minimum disturbance to environmentally sensitive lands.

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. An updated Geotechnical Report was provided for the proposed project (Geocon, August 31, 2001) and concluded that there are no geology or soil conditions that would preclude the development of the project. The proposed project complies with all applicable requirements related to storm water runoff and Best Management Practices. The slopes will be planted with species capable of reducing, and eventually preventing, soil erosion from wind and rain. Therefore, the proposed development will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The project site is not within or adjacent to the City's Multi-Habitat Planning Area [MHPA] for the Multiple Species Conservation Program [MSCP]. However, the Mitigated Negative Declaration [MND] addressed potential impacts and mitigation to noise, biology, drainage, hydrology/water quality, lighting, invasives and brush management. The project would be conditioned through the Mitigation Monitoring Reporting Program and other City Permit conditions to ensure that urban run off would be cleaned and dissipated before being routed to storm drains; all lighting would be shielded/directed away from adjacent environmentally sensitive lands; and all landscape species within/adjacent to open space areas or brush management zones would be native or non-invasive species. Accordingly, adverse impacts to adjacent environmentally sensitive lands would be prevented.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The project site is not within or adjacent to the MHPA for the MSCP. Therefore, the project is not subject to the MSCP adjacency guidelines. However, the Mitigation Monitoring and Reporting Plan [MMRP] will be implemented and includes mitigation measures consistent with the MSCP Subarea Plan. Incorporation of these measures will ensure consistency with the City of San Diego's MSCP Subarea Plan.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The proposed project is several miles inland from public beaches and local shoreline and therefore,

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will not contribute to the erosion of any public beaches or adversely affect shoreline or sand supply. Storm drain facilities will be constructed to collect surface water runoff, filter pollutants, and reduce water runoff velocities.

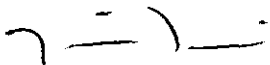
6. **The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.** The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The MND No. 2118 prepared for this project included a specific impact analysis for the proposed development. Findings to support the MND's conclusions have been made and are part of this project's record. All mitigation measures identified in the MND are reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. Any impacts would be mitigated to below a level of significance through implementation of the Mitigation, monitoring and Reporting Program.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Planned Development Permit No. 366166/Site Development Permit No. 366167 is granted to Torrey Brooke Developments Inc., Owner/ Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:as:mm:pev
02/06/09
Or.Dept:DSD
R-2009-624
MMS#5954

000289

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-0188

PLANNED DEVELOPMENT PERMIT NO. 366166
SITE DEVELOPMENT PERMIT NO. 366167
TORREY BROOKE II [MMRP]
CITY COUNCIL

This Planned Development Permit No. 366166/Site Development Permit No. 366167, is granted by the Council of the City of San Diego to Torrey Brooke Developments Inc., Owner/Permittee, pursuant to Chapter 12, Article 6, Divisions 5 and 6 of the San Diego Municipal Code. The 2.132-acre site is located on the west side of the southerly extension of La Harina Court in the AR-1-1 Zone (proposed RS-1-13 Zone), within the Torrey Highland Subarea Plan IV. The project site is legally described as remainder Parcel of Torrey Brook, Tract No. 98-1189, Map No. 14383, recorded May 1, 2002.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to create three parcels from a 2.132-acre site and rezone the site from AR-1-1 to RS-1-13. The subdivision would allow the development of two single-family structures and one open space lot described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated _____, on file in the Office of the Development Services Department.

The facility shall include:

- a. Subdivision of a 2.132-acre lot into two single-family lots and one open space lot; and
- b. Construction of two-single-family residences of approximately 4,812-square-feet and 4,642-square-feet respectively, totaling 9,454; and
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Six off-street parking spaces; and

- e. Public and private accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act, requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Land Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
 - a. *The Permittee signs and returns the Permit to the Development Services Department; and*
 - b. *The Permit is recorded in the Office of the San Diego County Recorder.*
3. Unless this permit has been revoked by the City of San Diego, the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. Issuance of this permit by the City of San Diego does not authorize the Owner/Permittee for said permit to violate any federal, state or City laws, ordinances, regulations, or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. section 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the

status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

PLANNING/DESIGN REQUIREMENTS

11. No fewer than six off-street parking spaces shall be maintained on each lot at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.
12. The Owner/Permittee shall comply with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. A deviation was granted under this permit to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
13. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.
14. A topographical survey conforming to the provisions of the Land Development Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or regulations of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
15. Prior to the approval of a Parcel Map, Owner/Permittee shall record a covenant of easement or an open space easement in perpetuity or dedicate in fee title any areas containing steep hillsides (or any other Environmentally Sensitive Lands) that are not part of the allowable development area. These areas shall be left undeveloped and in their natural state.
16. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
17. Prior to the approval of the first grading permit and/or recordation of the Parcel Map, Owner/Permittee shall record an open space easement in perpetuity across the Open Space Lot A identified on Exhibit "A." The retaining wall shall be kept outside of the recorded Open Space easement.
18. Except for restoration activities, at no time shall structures be built in or shall any development occur within the lot identified as Open Space Lot A on Exhibit "A."

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ENGINEERING REQUIREMENTS

19. The Permit shall comply with the conditions of the Torrey Brooke II, Tentative Map No. 366169.
20. Prior to issuance of any occupancy permits all required public improvements shall be completed satisfactory to the City Engineer.

LANDSCAPING REQUIREMENTS

21. Prior to issuance of any building permits, a complete set of brush management construction documents shall be submitted for approval to the City Manager and the Fire Marshall. The construction documents shall be in substantial conformance with Exhibit "A" and shall comply with the Uniform Fire Code, M.C. 555.0889.0201, the Landscape Standards and the Land Development Code section 142.0412 (Ordinance No. O-18451).
22. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A" Brush Management Plan.
23. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) are not permitted, while non-combustible accessory structures may be approved within the designated Zone One area subject to Fire Marshall and the City Manger's approval.
24. The following note shall be provided on the Brush Management Construction Documents: "The Owner/Permittee shall schedule a pre-construction meeting on site with the contractor and the development Services Department to discuss and outline the implementation of the Brush Management Program."
25. In Zones One and Two, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.
26. Prior to Final Inspection for any building, the approved Brush Management Program shall be implemented.
27. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.
28. The Brush Management Program shall consist of two zones consistent with the Brush Management Regulations of the Land Development Code section 142.0412 as follows: Lots one and two shall have a 35 foot Zone One and a 65 foot Zone Two.
29. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

30. All landscape and irrigation required by this permit shall conform to the City of San Diego's Landscape Regulations, the Land Development Manual - Landscape Standards, and all other landscape related City and regional standards.

31. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A."

32. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."

33. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan. Construction plans shall provide a 40 square foot area around each tree which is unencumbered by hardscape or utilities as set forth under *Land Development Code* section 142.0403(b)5.

34. Prior to issuance of Final Inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections consistent with Exhibit "A."

35. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

36. No irrigation run-off shall drain off site into the public right-of-way, streets, drives or alleys. No connection shall be made to any storm water sewer system without proper PBMP's.

37. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or Final Inspection.

WASTEWATER REQUIREMENTS

38. All proposed sewer facilities serving this development will be private.

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39. Prior to the issuance of any engineering or building permits, the developer shall provide an Encroachment Maintenance and Removal Agreement for all private sewer laterals located within City street right of ways.
40. Prior to the issuance of any engineering or building permits, the developer shall provide CC&R's, satisfactory to the Metropolitan Wastewater Department Director, for the operation and maintenance of a private sewer main that serves more than one lot.
41. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.
42. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
43. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&R's for the operation and maintenance of on site private sewer mains that serve more than one lot.

WATER REQUIREMENTS

44. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water services within the La Harina Court right-of-way adjacent to the Project site in a manner satisfactory to the Water Department Director and the City Engineer. Water services, as shown on approved Exhibit "A," shall be modified at final engineering to conform to standards.
45. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director, and the City Engineer. Any fire hydrant installation not conforming to public standards shall be private.
46. Prior to the issuance of any certificates of occupancy, all public water facilities necessary to serve the development shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.
47. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Public water facilities, as shown on approved Exhibit "A," shall be modified at final engineering to comply with standards.

FIRE REQUIREMENTS

48. Prior to the issuance of any certificates of occupancy, in lieu of providing Fire Department access, the single-family residences and garages shall be equipped with residential fire sprinkler systems satisfactory to the Fire Marshal.

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INFORMATION ONLY

Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this permit map, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

APPROVED by the Council of the City of San Diego on _____ by
Resolution No. R-_____.

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AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

**TORREY BROOKE DEVELOPMENTS
INC. - Owner/Permittee**

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

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RESOLUTION NUMBER R-
ADOPTED ON

WHEREAS, on August, 1, 2006, Civcom & Associates, submitted an application to the Development Services Department for a Planned Development Permit, Site Development Permit (ESL), Rezone, Street Vacation, & Tentative Map);

WHEREAS, the permit was set for a public hearing to be conducted by the Council of the City of San Diego;

WHEREAS, the issue was heard by the Council on _____, 2008; and

WHEREAS, the Council of the City of San Diego considered the issues discussed in the Mitigated Negative Declaration No. 42-0188, for Project No. 2118, NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is hereby certified that the Mitigated Negative Declaration No. 42-0188, for Project No. 2118 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the Council.

BE IT FURTHER RESOLVED that the Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said MND-Mitigation Monitoring and Reporting Program, a copy of which is attached hereto and incorporated by reference, is hereby approved.

BE IT FURTHER RESOLVED that pursuant to California Public Resources Code, Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or

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alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED:

By: _____
Derrick Johnson
Development Project Manager

ATTACHMENT: Exhibit A, Mitigation Monitoring and Reporting Program

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

TORREY BROOKE II.

PLANNED DEVELOPMENT PERMIT, SITE DEVELOPMENT PERMIT (ESL), REZONE,
STREET VACATION, & TENTATIVE MAP, PROJECT NO. 2118

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration for PTS No. 2118 shall be made conditions of the **Planned Development Permit, Site Development Permit (ESL), Rezone, Street Vacation, & Tentative Map** as may be further described below.

Prior to issuance of any grading permits, the Assistant Deputy Director (ADD) (aka Environmental Review Manager (ERM)) of the City's Land Development Review Division (LDR) shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading, Environmental Requirements: "Project No. 2118 is subject to a Mitigation Monitoring and Reporting Program and shall conform to the mitigation conditions as contained in the environmental document. The project is conditioned to include the monitoring of grading operations by a biologist, as outlined in said document."

General Measures

1. Prior to the issuance of a Notice to Proceed (NTP) or any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits the Assistant Deputy Director (ADD) environmental designee of the City's Land Development Review Division (LDR) shall verify that the grading and/or construction plans include an index of sheets shown on the first map sheet which includes "Environmental Requirements" and the following statement "The Torrey Brooke II development project is conditioned to have a qualified biological monitor on-site as determined at the preconstruction meeting. The project and shall conform to the Mitigation Monitoring and Reporting Program conditions as contained in the environmental document (LDR No. 42-0188, SCH No. Pending) and as shown verbatim on sheet(s)___." Please note, additional related mitigation features and/or notes can also be included on individual map sheets where appropriate (i.e. depicting areas of revegetation)."
2. Prior to issuance of any grading permits, the owner/permittee shall make arrangements to schedule a pre-construction meeting to ensure implementation of the MMRP. The meeting shall include the City Field Resident Engineer (RE), the monitoring biologist, and staff from the City's Mitigation Monitoring and Coordination (MMC) Section.

Biological Resources

Upland Mitigation

3. The proposed project area includes a total of 2.132 acres. Prior to recordation of the first final map and/or issuance of grading permits (which ever comes first), impacts to 0.362 acres of Diegan coastal sage scrub (located outside the MHPA) shall be mitigated to the satisfaction of the City Manager through off-site preservation of upland habitats in conformance with the City's Environmentally Sensitive Lands Ordinance (ESL) (Option A); or through payment into the City's Habitat Acquisition Fund No. (Option B).
 - Option A: For the off-site preservation option, the owner/permittee shall record a Covenant of Easement, Conservation Easement, or dedication in fee title to the City of San Diego for a total of 0.362 acres inside the MHPA in Tiers I-III, or 0.543 acres of Tier II outside the MHPA.
 - Option B: For the HAF option, the applicant shall pay an estimated total of \$13,937 into the fund (Assumes mitigation within MHPA, at current City rate of \$35,000 per acre + 10 % administration fee (both of which are subject to change), at 0.362 acres, = \$13,937.

Wetland Mitigation

4. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that any required agency permits have been obtained for 350-square-foot/approx. 0.008 acre wetland impacts (i.e. from the ACOE and CDFG, and RWQCB) or the process has commenced,

Preconstruction Measures

5. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below (see A through D):
 - A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of LDR stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.
 - B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project, if changed and/or not provided in the first letter.
 - C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or

other wildlife (including USFWS protocol) surveys, impact avoidance areas or other such information has been completed and approved by City MMC.

- D. The qualified biologist (project biologist) shall attend the first preconstruction meeting and perform measures listed under General Birds below (i.e. perform any required pre-grading/construction bird surveys).

General Birds

6. In order to comply with the Federal Migratory Bird Treaty Act, and CA Department of Fish and Game (CDFG) Code (which essentially prohibits any take of bird species - including disturbance of eggs, fledglings, nests, or plants/ substrate the nest is located in, or causing adults to abandon nests), the project biologist shall verify that no nesting birds are present on any portion of the project site or nearby vicinity (including off-site areas to be impacted) during grading and construction operations that would be disturbed indirectly or directly by the project, especially during the typical bird breeding season between February 1 and September 15. If any breeding birds would be directly impacted by grading, breeding season work shall be avoided, or the project biologist shall work with EAS and the appropriate wildlife agencies (i.e. US Fish and Wildlife Service and CDFG) to determine appropriate mitigation. If any least Bell's vireo or southwestern willow flycatcher are found to be nesting in the adjacent Drainage A, the following would apply:

AVIAN NOISE MITIGATION for LEAST BELL'S VIREO (State Endangered/Federally Endangered) and SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) – PLEASE NOTE, CAGN WOULD NOT BE PROTECTED ON-SITE DUE TO LACK OF MHPA ON OR ADJACENT TO THE SITE

7. Prior to the issuance of any grading permit, the City ADD (or appointed designee) shall verify that the following project requirements regarding the least Bell's vireo and southwestern willow flycatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 15 AND SEPTEMBER 15, THE BREEDING SEASON OF THE LEAST BELL'S VIREO; OR BETWEEN MAY 1 AND SEPTEMBER 1, THE BREEDING SEASON OF THE SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY ADD:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE LEAST BELL'S VIREO AND SOUTHWESTERN WILLOW FLYCATCHER. SURVEYS FOR THE THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. IF THE EITHER BIRD SPECIES IS PRESENT IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED LEAST BELL'S VIREO HABITAT SHALL BE PERMITTED. BETWEEN MAY 1 AND SEPTEMBER 1, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND

AND DEPENDING ON THE SPECIES BETWEEN MARCH 15 AND SEPTEMBER 15 AND/OR BETWEEN MAY 1 AND SEPTEMBER 1, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED LEAST BELL'S VIREO OR SOUTHWESTER WILLOW FLYCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF ANY OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE LEAST BELL'S VIREO. CONCURRENT WITH THE COMMENCEMENT OF

CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 2 AND/OR SEPTEMBER 16).

- * Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

B. IF LEAST BELL'S VIREO OR SOUTHWESTERN WILLOW FLYCATCHER ARE NOT DETECTED DURING THE PROTOCOL SURVEYS, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 15 AND SEPTEMBER 15 AND OR MAY 1 AND SEPTEMBER 1 AS FOLLOWS:

- I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR LEAST BELL'S VIREO AND/OR SOUTHWESTERN WILLOW FLYCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.
- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THESE SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

Construction Measures

- 8. As determined at the Preconstruction Meeting, the project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within onsite, and surrounding sensitive habitat as shown on the approved Exhibit A.

9. All construction activities (including staging areas) shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

Post Construction Measures

10. The following measures are required in order to carry out and ensure the successful revegetation of the graded portions of the Biology Buffer and Zone 2 Brush Management Areas (although these direct impacts will be mitigated of site per ESL ratios – the following 25 month revegetation program is required:
 - A. Final Grading Report and 25 Month Revegetation Program
 1. 25 month Revegetation Establishment/Maintenance Period
 - a. The RMC shall be retained to complete initial grading and maintenance monitoring activities throughout the 25 month monitoring period.
 - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
 - c. Maintenance activities will include all items described in the LCD.
 - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC.
 2. Biological Monitoring
 - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.
 - b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
 - c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly through the second year.
 - d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, and 24 months by the PQB or QBM. All plant material must be able to survived without supplemental irrigation after the first two years.
 - e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height

(if applicable) and percent cover of non-native/non invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used determine attainment of performance/success criteria identified within the LCD.

- f. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PBQ/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

C. Submittal of Final Grading Report and Draft Monitoring Report

1. A Final Grading Report documenting any additional impact areas or problems during grading; and a draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The latter report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120 day period to determine mortality of individuals.
2. The PQB shall submit two copies of the Final Grading Report and Draft Monitoring Report which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.
3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

D. Final Monitoring Reports(s)

11. PQB shall prepare a Final Monitoring upon achievement of the 25-month performance/success criteria and completion.
 - a. The Final Monitoring report shall be submitted to MMC for evaluation of the success of the mitigation effort and final acceptance. A request for a pre-final inspection shall be submitted at this time, MMC will schedule after review of report.
 - b. If at the end of the 25 months any of the revegetated area fails to meet the project's final success standards, the applicant must consult with MMC. This consultation shall take place to determine whether the revegetation effort is acceptable. The applicant understands that failure of any significant portion of the revegetation/restoration area may result in a requirement to replace or renegotiate that portion of the site and/or extend the monitoring and establishment/maintenance period until all success standards are met.

Land Use (MHPA Adjacency) – PLEASE NOTE THESE REQUIREMENTS APPLY TO PROTECT THE DESIGNATED URBAN AMENITY ABUTTING THE SITE TO THE EAST AND DUE TO THE CONNECTIVITY OF “DRAINAGE A” WITH MHPA TO THE SOUTH

Mitigation for Indirect Impacts or Unanticipated Direct Impacts

12. Prior to issuance of grading permits, the City shall verify that the project is in compliance with the MSCP Subarea Plan's Land Use Adjacency Requirements; and that the following site specific requirements are noted on the grading plans under the heading *Environmental Requirements*:
 - A. The qualified biologist (project biologist) shall supervise the placement of orange construction fencing or equivalent along the boundary of the development area as shown on the approved grading plans. The large patch of CA adolphia shown on Figure 4 of the biology report with a light green square with black dot in the middle is to be specifically fenced to exclude it's entirety from the grading area.
 - B. The project biologist shall meet with the owner/permittee or designee and the construction crew to conduct an on-site educational session regarding the need to avoid impacts outside of the approved development area.
 - C. During grading activities, the Best Management Practices for erosion control shall be implemented and monitored as needed to prevent any significant sediment transport. These practices may include but may not be limited to the following: the use of materials such as gravel bags, fiber rolls, sediment fencing, and erosion control matting to stabilize disturbed areas; and installation of erosion control materials, particularly on the downslope side of disturbed areas to prevent soil loss.
 - D. All construction activities shall take place only inside the fenced area. Grading materials shall be stored inside the fenced development area.
 - E. Prior to the release of the grading bond, the project biologist shall submit a letter report to the Environmental Review Manager that assesses any project impacts

resulting from construction. In the event that impacts exceed the allowed amounts, the additional impacts shall be mitigated in accordance with the City of San Diego Land Developmental Zoning Code Update Biology Guidelines, to the satisfaction of the City Manager.

- F. All drainage from development and sheet flow would flow into a new bioswale. Graded slopes would be revegetated per the City's Landscape Manual.
- G. All lighting associated with the project will be shielded and directed away from the urban/natural edge.
- H. All plantings at the urban/natural edge shall be native, drought tolerant, and acceptable to the fire marshal. No invasive/non-native species shall be located on-site where they have the potential to invade on-site, or adjacent natural lands. All revegetation within Brush Management Zone 2 and/or the biological buffer must be native chaparral or coastal sage scrub species.
- I. Appropriate fencing as required by MSCP/Landscaping/Permit or Long Range Planning shall be installed at the rear of the properties to protect open space areas from urban encroachment (people, pets, plants and toxins). Typically these fences are 2 feet concrete base with open iron bars above to a maximum of 6 feet.

000311

RESOLUTION NUMBER R-

ADOPTED ON

WHEREAS, on August 1, 2006, Civcom & Associates, submitted an application to the Development Services Department for a Planned Development Permit, Site Development Permit (ESL), Rezone, Street Vacation, & Tentative Map);

WHEREAS, the permit was set for a public hearing to be conducted by the Council of the City of San Diego;

WHEREAS, the issue was heard by the Council on _____, 2008; and

WHEREAS, the Council of the City of San Diego considered the issues discussed in the Mitigated Negative Declaration No. 42-0188, for Project No. 2118, NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is hereby certified that the Mitigated Negative Declaration No. 42-0188, for Project No. 2118 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the Council.

BE IT FURTHER RESOLVED that the Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said MND-Mitigation Monitoring and Reporting Program, a copy of which is attached hereto and incorporated by reference, is hereby approved.

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BE IT FURTHER RESOLVED that pursuant to California Public Resources Code, Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or

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2

alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: MICHAEL AGUIRRE, CITY ATTORNEY

By: _____

Deputy City Attorney

ATTACHMENT: Exhibit A, Mitigation Monitoring and Reporting Program

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

TORREY BROOKE II.

PLANNED DEVELOPMENT PERMIT, SITE DEVELOPMENT PERMIT (ESL), REZONE,
STREET VACATION, & TENTATIVE MAP, PROJECT NO. 2118

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration for PTS No. 2118 shall be made conditions of the **Planned Development Permit, Site Development Permit (ESL), Rezone, Street Vacation, & Tentative Map** as may be further described below.

Prior to issuance of any grading permits, the Assistant Deputy Director (ADD) (aka Environmental Review Manager (ERM)) of the City's Land Development Review Division (LDR) shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading, Environmental Requirements: "Project No. 2118 is subject to a Mitigation Monitoring and Reporting Program and shall conform to the mitigation conditions as contained in the environmental document. The project is conditioned to include the monitoring of grading operations by a biologist, as outlined in said document."

General Measures

1. Prior to the issuance of a Notice to Proceed (NTP) or any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits the Assistant Deputy Director (ADD) environmental designee of the City's Land Development Review Division (LDR) shall verify that the grading and/or construction plans include an index of sheets shown on the first map sheet which includes "Environmental Requirements" and the following statement "The Torrey Brooke II development project is conditioned to have a qualified biological monitor on-site as determined at the preconstruction meeting. The project and shall conform to the Mitigation Monitoring and Reporting Program conditions as contained in the environmental document (LDR No. 42-0188, SCH No. Pending) and as shown verbatim on sheet(s) ___." Please note, additional related mitigation features and/or notes can also be included on individual map sheets where appropriate (i.e. depicting areas of revegetation)."
2. Prior to issuance of any grading permits, the owner/permittee shall make arrangements to schedule a pre-construction meeting to ensure implementation of the MMRP. The meeting shall include the City Field Resident Engineer (RE), the monitoring biologist, and staff from the City's Mitigation Monitoring and Coordination (MMC) Section.

Biological Resources

Upland Mitigation

3. The proposed project area includes a total of 2.132 acres. Prior to recordation of the first final map and/or issuance of grading permits (which ever comes first), impacts to 0.362 acres of Diegan coastal sage scrub (located outside the MHPA) shall be mitigated to the satisfaction of the City Manager through off-site preservation of upland habitats in conformance with the City's Environmentally Sensitive Lands Ordinance (ESL) (Option A); or through payment into the City's Habitat Acquisition Fund No. (Option B).

Option A: For the off-site preservation option, the owner/permittee shall record a Covenant of Easement, Conservation Easement, or dedication in fee title to the City of San Diego for a total of 0.362 acres inside the MHPA in Tiers I-III, or 0.543 acres of Tier II outside the MHPA.

Option B: For the HAF option, the applicant shall pay an estimated total of \$13,937 into the fund (Assumes mitigation within MHPA, at current City rate of \$35,000 per acre + 10 % administration fee (both of which are subject to change), at 0.362 acres, = \$13,937.

Wetland Mitigation

4. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that any required agency permits have been obtained for 350-square-foot/approx. 0.008 acre wetland impacts (i.e. from the ACOE and CDFG, and RWQCB) or the process has commenced,

Preconstruction Measures

5. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below (see A through D):
 - A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of LDR stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.
 - B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project, if changed and/or not provided in the first letter.
 - C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife (including USFWS protocol) surveys, impact avoidance areas or other

such information has been completed and approved by City MMC.

- D. The qualified biologist (project biologist) shall attend the first preconstruction meeting and perform measures listed under General Birds below (i.e. perform any required pre-grading/construction bird surveys).

General Birds

6. In order to comply with the Federal Migratory Bird Treaty Act, and CA Department of Fish and Game (CDFG) Code (which essentially prohibits any take of bird species - including disturbance of eggs, fledglings, nests, or plants/ substrate the nest is located in, or causing adults to abandon nests), the project biologist shall verify that no nesting birds are present on any portion of the project site or nearby vicinity (including off-site areas to be impacted) during grading and construction operations that would be disturbed indirectly or directly by the project, especially during the typical bird breeding season between February 1 and September 15. If any breeding birds would be directly impacted by grading, breeding season work shall be avoided, or the project biologist shall work with EAS and the appropriate wildlife agencies (i.e. US Fish and Wildlife Service and CDFG) to determine appropriate mitigation. If any least Bell's vireo or southwestern willow flycatcher are found to be nesting in the adjacent Drainage A, the following would apply:

AVIAN NOISE MITIGATION for LEAST BELL'S VIREO (State Endangered/Federally Endangered) and SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) - PLEASE NOTE. CAGN WOULD NOT BE PROTECTED ON-SITE DUE TO LACK OF MHPA ON OR ADJACENT TO THE SITE

7. Prior to the issuance of any grading permit, the City ADD (or appointed designee) shall verify that the following project requirements regarding the least Bell's vireo and southwestern willow flycatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 15 AND SEPTEMBER 15, THE BREEDING SEASON OF THE LEAST BELL'S VIREO; OR BETWEEN MAY 1 AND SEPTEMBER 1, THE BREEDING SEASON OF THE SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY ADD:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE LEAST BELL'S VIREO AND SOUTHWESTERN WILLOW FLYCATCHER. SURVEYS FOR THE THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. IF THE EITHER BIRD SPECIES IS PRESENT IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED LEAST BELL'S VIREO HABITAT SHALL BE PERMITTED. BETWEEN MAY 1 AND SEPTEMBER 1, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND

AND DEPENDING ON THE SPECIES BETWEEN MARCH 15 AND SEPTEMBER 15 AND/OR BETWEEN MAY 1 AND SEPTEMBER 1, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED LEAST BELL'S VIREO OR SOUTHWESTER WILLOW FLYCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF ANY OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE LEAST BELL'S VIREO. CONCURRENT WITH THE COMMENCEMENT OF

CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 2 AND/OR SEPTEMBER 16).

- * Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

B. IF LEAST BELL'S VIREO OR SOUTHWESTERN WILLOW FLYCATCHER ARE NOT DETECTED DURING THE PROTOCOL SURVEYS, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 15 AND SEPTEMBER 15 AND OR MAY 1 AND SEPTEMBER 1 AS FOLLOWS:

- I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR LEAST BELL'S VIREO AND/OR SOUTHWESTERN WILLOW FLYCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.
- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THESE SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

Construction Measures

- 8. As determined at the Preconstruction Meeting, the project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within onsite, and surrounding sensitive habitat as shown on the approved Exhibit A.

9. All construction activities (including staging areas) shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

Post Construction Measures

10. The following measures are required in order to carry out and ensure the successful revegetation of the graded portions of the Biology Buffer and Zone 2 Brush Management Areas (although these direct impacts will be mitigated of site per ESL ratios – the following 25 month revegetation program is required:
 - A. Final Grading Report and 25 Month Revegetation Program
 1. 25 month Revegetation Establishment/Maintenance Period
 - a. The RMC shall be retained to complete initial grading and maintenance monitoring activities throughout the 25 month monitoring period.
 - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
 - c. Maintenance activities will include all items described in the LCD.
 - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC.
 2. Biological Monitoring
 - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.
 - b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
 - c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly through the second year.
 - d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, and 24 months by the PQB or QBM. All plant material must be able to survived without supplemental irrigation after the first two years.
 - e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height

(if applicable) and percent cover of non-native/non invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used determine attainment of performance/success criteria identified within the LCD.

- f. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PBQ/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

C. Submittal of Final Grading Report and Draft Monitoring Report

1. A Final Grading Report documenting any additional impact areas or problems during grading; and a draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The latter report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120 day period to determine mortality of individuals.
2. The PQB shall submit two copies of the Final Grading Report and Draft Monitoring Report which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.
3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

D. Final Monitoring Reports(s)

11. PQB shall prepare a Final Monitoring upon achievement of the 25-month performance/success criteria and completion.
 - a. The Final Monitoring report shall be submitted to MMC for evaluation of the success of the mitigation effort and final acceptance. A request for a pre-final inspection shall be submitted at this time, MMC will schedule after review of report.
 - b. If at the end of the 25 months any of the revegetated area fails to meet the project's final success standards, the applicant must consult with MMC. This consultation shall take place to determine whether the revegetation effort is acceptable. The applicant understands that failure of any significant portion of the revegetation/restoration area may result in a requirement to replace or renegotiate that portion of the site and/or extend the monitoring and establishment/maintenance period until all success standards are met.

Land Use (MHPA Adjacency) – PLEASE NOTE THESE REQUIREMENTS APPLY TO PROTECT THE DESIGNATED URBAN AMENITY ABUTTING THE SITE TO THE EAST AND DUE TO THE CONNECTIVITY OF "DRAINAGE A" WITH MHPA TO THE SOUTH

Mitigation for Indirect Impacts or Unanticipated Direct Impacts

12. Prior to issuance of grading permits, the City shall verify that the project is in compliance with the MSCP Subarea Plan's Land Use Adjacency Requirements; and that the following site specific requirements are noted on the grading plans under the heading Environmental Requirements:
 - A. The qualified biologist (project biologist) shall supervise the placement of orange construction fencing or equivalent along the boundary of the development area as shown on the approved grading plans. The large patch of CA adolphia shown on Figure 4 of the biology report with a light green square with black dot in the middle is to be specifically fenced to exclude it's entirety from the grading area.
 - B. The project biologist shall meet with the owner/permittee or designee and the construction crew to conduct an on-site educational session regarding the need to avoid impacts outside of the approved development area.
 - C. During grading activities, the Best Management Practices for erosion control shall be implemented and monitored as needed to prevent any significant sediment transport. These practices may include but may not be limited to the following: the use of materials such as gravel bags, fiber rolls, sediment fencing, and erosion control matting to stabilize disturbed areas; and installation of erosion control materials, particularly on the downslope side of disturbed areas to prevent soil loss.
 - D. All construction activities shall take place only inside the fenced area. Grading materials shall be stored inside the fenced development area.
 - E. Prior to the release of the grading bond, the project biologist shall submit a letter report to the Environmental Review Manager that assesses any project impacts

resulting from construction. In the event that impacts exceed the allowed amounts, the additional impacts shall be mitigated in accordance with the City of San Diego Land Developmental Zoning Code Update Biology Guidelines, to the satisfaction of the City Manager.

- F. All drainage from development and sheet flow would flow into a new bioswale. Graded slopes would be revegetated per the City's Landscape Manual.
- G. All lighting associated with the project will be shielded and directed away from the urban/natural edge.
- H. All plantings at the urban/natural edge shall be native, drought tolerant, and acceptable to the fire marshal. No invasive/non-native species shall be located on-site where they have the potential to invade on-site, or adjacent natural lands. All revegetation within Brush Management Zone 2 and/or the biological buffer must be native chaparral or coastal sage scrub species.
- I. Appropriate fencing as required by MSCP/Landscaping/Permit or Long Range Planning shall be installed at the rear of the properties to protect open space areas from urban encroachment (people, pets, plants and toxins). Typically these fences are 2 feet concrete base with open iron bars above to a maximum of 6 feet.

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ATTACHMENT 7

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
DEPARTMENT

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR

RECORDER'S USE

JOB ORDER NUMBER: 42-0188

PLANNED DEVELOPMENT PERMIT NO. 366166

SITE DEVELOPMENT PERMIT NO. 366167

TORREY BROOKE II [MMRP]

City Council

DRAFT

This Planned Development Permit No. 366166 and Site Development Permit No. 366167, is granted by the Council of the City of San Diego to TORREY BROOKE DEVELOPMENTS INC, Owner/Permittee pursuant to Section(s), 126.0501, 126.0601 of the Land Development Code of the City of San Diego. The 2.13-acre site is located on the west side of the southerly extension of La Harina Court in the AR-1-1 Zone (proposed RS-1-13 Zone), within the Torrey Highland Subarea Plan IV. The project site is legally described as remainder Parcel of Torrey Brook, Tract No. 98-1189, Map No. 14383, recorded May 1, 2002.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to create three parcels from a 2.13-acre site and Rezone the site from AR-1-1 to RS-1-13. The subdivision would allow the development of two single-family structures and one open space lot described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated December 2, 2008, on file in the Office of the Development Services Department. The facility shall include:

- a. Subdivision of a 2.13-acre lot into two single-family lots and one open space lot; and
- b. Construction of two-single-family residences of approximately 4,442-square-feet and 5,130-square-feet respectively, totaling 9,572; and
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Six off street parking spaces;
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Land

Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. Issuance of this permit by the City of San Diego does not authorize the Owner/Permittee for said permit to violate any federal, state or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been *granted*.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

PLANNING/DESIGN REQUIREMENTS

11. No fewer than six off-street parking spaces shall be maintained on each lot at all times in the approximate locations shown on the approved Exhibits "A," dated December 2, 2008, on file in the Office of the Development Services Department. Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

12. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. The project was granted a deviation to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

13. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

14. A topographical survey conforming to the provisions of the Land Development Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or regulations of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

15. Prior to the approval of a Parcel Map, Owner/Permittee shall record a covenant of easement or dedicate in fee title any areas containing steep hillsides (or any other Environmentally Sensitive Lands) that are not part of the allowable development area. These areas shall be left undeveloped and in their natural state.

16. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

17. Prior to the approval of the first grading permit and/or recordation of the Parcel Map, permittee shall record a covenant of easement across the Open Space Lot A identified on Exhibit "A." The retaining wall shall be kept outside of the recorded Open Space easement.

18. Except for restoration activities, at no time shall structures be built in or shall any development occur within the lot identified as Open Space Lot A on Exhibit "A."

ENGINEERING REQUIREMENTS

19. The Permit shall comply with the conditions of the Torrey Brooke II, Tentative Map No. 366169.

20. Prior to issuance of any occupancy permits all required public improvements shall be completed satisfactory to the City Engineer.

LANDSCAPING REQUIREMENTS

21. Prior to issuance of any building permits, a complete set of brush management construction documents shall be submitted for approval to the City Manager and the Fire Marshall. The construction documents shall be in substantial conformance with Exhibit 'A' and shall comply with the Uniform Fire Code, M.C. 555.0889.0201, the Landscape Standards and the Land Development Code Section 142.0412 (Ordinance 18451).

22. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit 'A' Brush Management Plan, on file in the Office of the Development Services Department.

23. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) are not permitted, while non-combustible accessory structures may be approved within the designated Zone One area subject to Fire Marshall and the City Manger's approval.

24. The following note shall be provided on the Brush Management Construction Documents: 'It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and the development Services Department to discuss and outline the implementation of the Brush Management Program.

25. In Zones One and Two, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.

26. Prior to final inspection and Final Inspection for any building, the approved Brush Management Program shall be implemented.

27. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

28. The Brush Management Program shall consist of two zones consistent with the Brush Management Regulations of the Land Development Code section 142.0412 as follows: Lots 1 and two shall have a 35-foot Zone One with 65-foot Zone Two.

29. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

30. All landscape and irrigation required by this permit shall conform to the City of San Diego's Landscape Regulations - Article 2, Division 4; the Land Development Manual - Landscape Standards; and all other landscape related City and Regional Standards.

31. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit 'A,' on file in the Office of the Development Services Department.

32. In the event that a *foundation only permit* is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit 'A,' Landscape Concept Plan, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

33. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit 'A,' Landscape Concept Plan, on file in the Office of the Development Services Department. Construction plans shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

34. Prior to issuance of Final Inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections consistent with Exhibit 'A.'

35. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

36. No irrigation run-off shall drain off site into the public right-of-way, streets, drives or alleys. No connection shall be made to any storm water sewer system without proper PBMP's.

37. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City manager within 30 days of damage or Final Inspection.

WASTEWATER REQUIREMENTS

38. All proposed sewer facilities serving this development will be private.

39. Prior to the issuance of any engineering or building permits, the developer shall provide an Encroachment Maintenance and Removal Agreement for all private sewer laterals located within City street right of ways.

40. Prior to the issuance of any engineering or building permits, the developer shall provide CC&R's, satisfactory to the Metropolitan Wastewater Department Director, for the operation and maintenance of a private sewer main that serves more than one lot.

41. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

42. The developer shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

ATTACHMENT 7

43. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&R's for the operation and maintenance of on site private sewer mains that serve more than one lot.
44. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

WATER REQUIREMENTS

45. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water services within the La Harina Court right-of-way adjacent to the project site in a manner satisfactory to the Water Department Director and the City Engineer. Services, as shown on approved Exhibit "A", shall be modified at final engineering to conform to standards.
46. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director and the City Engineer. Any fire hydrant installation not conforming to public standards, shall be private.
47. Prior to the issuance of any certificates of occupancy, all public water facilities necessary to serve the development, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.
48. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, as shown on approved Exhibit "A", shall be modified at final engineering to comply with standards.

FIRE REQUIREMENTS

49. Prior to the issuance of any certificates of occupancy, in lieu of providing Fire Department access the single-family residences and garages shall be equipped with residential fire sprinkler systems satisfactory to the Fire Marshal.

INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this permit map, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

APPROVED by the City Council of the City of San Diego on December 2, 2008.

RESOLUTION No. 4464-PC

ADOPTED ON OCTOBER 9, 2008

WHEREAS, TORREY BROOKE DEVELOPMENTS INC, Owner/Permittee, filed an application with the City of San Diego for a permit to subdivide the 2.13-acre site into three separate parcels at the end of La Harina Court, in the AR-1-1 Zone of the Torrey Highland Subarea Plan IV (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Planned Development Permit No. 366166 and Site Development Permit No. 366167), on portions of a on a 2.13-acre site;

WHEREAS, the project site is located at the end of La Harina Court and is bordered roughly to the south by Adobe Bluffs Road, to the west, east, and north by single-family homes in the AR-1-1 Zone of the Torrey Highland Subarea Plan IV;

WHEREAS, the project site is legally described as remainder Parcel of Torrey Brook, Tract No. 98-1189, Map No. 14383, recorded May 1, 2002;

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit No. 366166 and Site Development Permit No. 366167, and pursuant to Resolution No. 4464-PC, voted to recommend City Council approval of the project; and NOW, THEREFORE,

BE IT RESOLVED, by the Planning Commission of the City of San Diego that it hereby recommends approval of Planned Development Permit No. 366166 and Site Development Permit No. 366167, pursuant to the Land Development Code of the City of San Diego; that the Planning Commission recommends approval of the following written Findings, dated October 9, 2008.

Planned Development Permit Findings

1. **The proposed development will not adversely affect the applicable land use Plan.** The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. This property is designated in the Torrey Highland Subarea Plan IV for residential development from three to five dwelling units per net acre and open space. The proposed use of this site for residential uses would be consistent with the Torrey Highland Subarea Plan IV. The proposed project, being determined consistent with the community plan land use, would not adversely affect the relevant land use plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare** The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The permit controlling the development proposed for this site contains conditions addressing the project compliance with the City's regulations and other regional, state and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Building, Fire, Plumbing, Electrical, Mechanical Code and the City regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

3. **The proposed development will comply with the regulations of the Land Development Code.** The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. Specific conditions of approval require the continued compliance with all relevant regulations of the San Diego Land Development Code in effect for this site and have been written as such into the permit. Development of the site with a residential use shall meet all requirements of the regulations, as allowed through a Planned Development Permit. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project.

4. **The proposed development, when considered as a whole, will be beneficial to the community.** The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The provision of market rate housing in the community provides a benefit to the community by adding to the available housing stock of the City, is consistent with other approved land uses in the community, is consistent with the intended planning efforts of the City, and will enhance the neighborhood and community by its being developed as described by the submitted conceptual designs.

5. **Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The project proposes to create three parcels from a 2.13-acre site and allow the

development of two-single-family structures. The project has been designed to reduce impacts to sensitive steep slopes, biological resources and to create a grading concept compatible with the existing neighborhood. The applicants are requesting a deviation to allow access to Lot Two (2) via a private driveway extending southerly from La Harina Court through an access easement. The private driveway and easement will be located on Lot One (1) at the southern terminus of La Harina Court. Access to Lot One (1) would be via a cul de-sac at La Harina Court. Staff supports the deviation to allow greater flexibility in the design of the project. Staff has determined the deviation results in a superior design and reduction of impacts to environmentally sensitive lands. The project would not adversely affect the Land Use Element and is consistent with the goals and policies of the Torrey Highland Subarea Plan IV.

Site Development Permit Findings

6. The proposed development will not adversely affect the applicable land use Plan. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The Torrey Highland Subarea Plan IV identifies this site for residential development. This property is designated in the Torrey Highland Subarea Plan IV for residential development up to three to five dwelling units per net acre and open space. Please see Planned Development Permit Finding No. 1 above.

7. The proposed development will not be detrimental to the public health, safety, and welfare. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The permit controlling the proposed development and its continued operation contains conditions addressing project compliance with applicable City, regional, state, and federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the project area. Please see Planned Development Permit No. 2 above.

8. The proposed development will comply with the regulations of the Land Development Code. The project proposes to create three parcels from a 2.13-acre site and allow the development of two-single-family structures. The proposed development requires a Site Development Permit to assure compliance with the Environmentally Sensitive Lands Ordinance of the Land Development Code. The Torrey Highland Subarea Plan IV designates the subject property for Very Low Density Residential development at three to five dwelling units per acre. The density of the proposed project is 0.94, which is within the allowable density range. The proposed development with the exception of the street frontage requirement complies with all applicable Land Development Code regulations as allowed by a Planned Development Permit.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that the recommendation of the Planning Commission is.

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sustained, and Planned Development Permit No. 366166, and Site Development Permit No. 366167 are recommend for approval by the City Council.

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Item 6

PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF REGULAR SCHEDULED MEETING OF
OCTOBER 9, 2008
IN CITY COUNCIL CHAMBERS - 12TH FLOOR
CITY ADMINISTRATION BUILDING

CHRONOLOGY OF THE MEETING:

Chairperson Schultz called the meeting to order at 9:16 a.m. Chairperson Schultz adjourned the meeting at 7:00 p.m.

ATTENDANCE DURING THE MEETING:

Chairperson Barry Schultz –present (left @ 6:00pm)
Vice-Chairperson - Eric Naslund –present
Commissioner Robert Griswold – present
Commissioner Gil Ontai –present
Commissioner Dennis Otsuji – present
Commissioner Mike Smiley – not present
Commissioner Tim Golba - Present

Staff

Shirley Edwards, City Attorney - present
Mary Wright, Planning Department – present
Mike Westlake, Development Services Department – present
Brenda Clark, Legislative Recorder - present
Elisa Contreras, Recorder – present

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ITEM- 6: *Continued from June 5, 2008, July 10, 2008, trailed from September 25, 2008 and October 2, 2008:*

TORREY BROOKE II – PROJECT NO. 2118

City Council District: 1; Plan Area: Torrey Highlands Sub Area IV.

Staff: Derrick Johnson

Speaker slips submitted in favor of project by Karen Clemes, Janelle Young, Roger Bhatia, Russell DePhillips.

Speaker slips submitted opposed to project by Charles Sellers, John Tillson.

COMMISSION ACTION:

MOTION BY COMMISSIONER NASLUND TO RECOMMEND THE CITY COUNCIL CERTIFY MITIGATED NEGATIVE DECLARATION NO. 2118, AND ADOPT THE MITIGATION, MONITORING, AND REPORTING PROGRAM; AND

RECOMMEND THE CITY COUNCIL APPROVE REZONE NO. 366168, TENTATIVE MAP NO. 366169, PLANNED DEVELOPMENT PERMIT NO. 366166, STREET VACATION NO. 478535 AND SITE DEVELOPMENT PERMIT NO. 366167 AS PRESENTED IN REPORT NO. PC-08-060. Second by Commissioner Ontai. Passed by a vote of 6-0-1 with Commissioner Smiley not present. Resolution No. 4464-PC

ADDITIONAL RECOMMENDATION:

COMMISSIONER NASLUND RECOMMENDED THE APPLICANT WILL BE REQUIRED TO COMPLETE ALL PUBLIC IMPROVEMENTS PRIOR TO THE ISSUANCE OF ANY OCCUPANCY PERMITS.

ITEM-7: *Continued from September 4, 2008 and trailed from September 25, 2008 and October 2, 2008:*

***LIBERATORE RESIDENCE – PROJECT NO. 113555**

City Council District: 2; Plan Area: Peninsula

Staff: Laila Iskandar

Speaker slips submitted in favor of project by Carl Trautvetter, Matt Peterson, Fred Liberatore, Skip Shaputnic.

Speaker slips submitted opposed to project by Anita Busquets, Larry Angione, Joan Greenhood, Dee Krutop, Niki Krutop, William Ladd, Matthew DeVol.